THE First Part OF THE INSTITVTES OF The Lawes of England: OR A Commentary upon *Littleton*, not the name of a Lawyer only, but of the Law it selfe.

MARTIAL.

Quid tenuia juvant miseris ludibria cartæ?
Hoc lege, quod possis dicere jure meum est.

CICERO.

Major hæreditas venit unicuique nostrum à Jure, & Legibus, quàm à Parentibus.

Hæc ego grandævus posui tibi candide Lector.

Authore EDW. COKE Milite.

The third Edition, corrected.

LONDON,
Printed by *M. F. I. H.* and *R. T.* Assignes of *I. More* Esquire.

Anno 1633.

FR
MVSEVM
BRITANNICVM

DEO,

PATRIÆ,

TIBI.

V. Full: Worth: Staffordsh: 42. Worcestersh: 171

Proœmium.

OUr Author, a Gentleman of an ancient and faire descended Familie *de Littleton*, tooke his name of a Towne so called, as that famous chiefe Justice Sir *Iohn de Markham*, and divers of our profession and others have done.

The name and degree of our Author.

Thomas de Littleton Lord of Frankley, had issue *Elizabeth* his only child, and did beare the Armes of his Ancestors, *viz.* Argent, a Cheuron betweene three Escalop shels Sable. The bearing hereof is very ancient and honourable, for the Senators of Rome did weare bracelets of Escalop shels about their armes, and the Knights of the honourable Order of *S. Michael* in France doe weare a coller of Gold in the forme of Escalop shels at this day. Hereof much more might be said, but it belongs unto others.

His Armes.

Instituted by *Lewis* the eleventh, King of France, 9. E. 4. 1469.

With this *Elizabeth* maried *Thomas Westcote* Esquire, the Kings servant in Court, a Gentleman anciently descended, who bare Argent, a Bend between two Cotisses Sable, a Bordure engrayled Gules, Bezantie.

Thomas Westcote

But she being faire and of a noble spirit, and having large possessions and inheritance from her Ancestors *de Littleton*, and from her mother the daughter & heire of *Richard de Quatermains*, and other her ancestors, (ready means in time to work her owne desire) resolved to continue the honour of her name (as did the daughter and heire of *Charleton* with one of the sonnes of *Knightly*, and divers others) and therefore prudently, whilest it was in her owne power, provided by *Westcotes* assent before mariage, that her issue inheritable should be called by the name of *de Littleton*. These two had issue foure sons, *Thomas*, *Nicholas*, *Edmund* and *Guy*, and foure daughters.

Our Author bare his Mothers surname.

Thomas the eldest was our Author, who bare his fathers Christian name *Thomas*, and his mothers surname *de Littleton*, and the armes *de Littleton* also; and so doth his posteritie beare both name and armes to this day.

Camden

Camden in his Britannia saith thus; *Thomas Littleton* alias *Westcote* the famous Lawyer, to whose Treatise of Tenures the Students of the Common Law are no lesse beholding, than the Civilians to *Iustinians* Institutes.

Psalm. 92. 11. The just shall flourish like the Palme tree, and spread abroad like the Cedars in Libanus.

The dignitie of this faire descended Familie *de Littleton* hath growne up together, and spread it selfe abroad by matches with many other ancient and honourable Families, to many worthy and fruitfull branches, whose posteritie flourish at this day, and quartereth many faire Coats, and * enjoyeth fruitfull and opulent inheritances thereby.

* The best kind of quartering of Armes.

He was of the Inner Temple, and read learnedly upon the Statute of *W.* 2. *De donis conditionalibus*, which we have. He was afterward called *ad ſtatum & gradum Servientis ad Legem*, and was Steward of the Court of the Marſhalſey of the Kings houſhold, and for his worthineſſe was made by King *H.* 6. his Serjeant, and rode Juſtice of Aſſiſe the Northern Circuit, which places he held under King *E.* 4. untill he in the ſixt yeare of his reigne conſtituted him one of the Judges of the Court of Common Pleas, and then hee rode Northamptonſhire Circuit. The ſame King in the 15. yeare of his reigne, with the Prince, and other Nobles and Gentlemen of ancient bloud, honoured him with Knighthood of the Bath.

Kings Serjeant. *Rot. Pat.* 33 *H.* 6. *parte* 1. *M.* 16. *Mich.* 34. *H.* 6. *fol* 3 a.

Judge of the Comon Pleas, *Rot. Pat.* 6. *E* 4. *Parte* 1. *M* 15.

Knight of the Bath. 15. *E.* 4.

He compiled this booke when he was Judge, after the fourteenth yeare of the reigne of King *E.* 4. but the certaine time wee cannot yet attain unto, but (as wee conceive) it was not long before his death, becauſe it wanted his laſt hand, for that Tenant by Elegit, Statute Merchant, and Staple, were in the table of the firſt printed booke, and yet he never wrote of them.

When he wrote this Booke. 14. *E* 4. *tit. Garranty* 5. *Litt. Sect.* 692. 729. & 730.

Our Author in compoſing this Work had great furtherance, in that hee flouriſhed in the time of many famous and expert Sages of the Law. [a] Sir *Richard Newton*, [b] Sir *Iohn Priſot*, [c] Sir *Robert Danby*, [d] Sir *Thomas Brian*, [e] Sir *Pierce Arderne*, [f] Sir *Richard Choke*, [g] *Walter Moyle*, [h] *William Paſton*, [i] *Robert Danvers*, [k] *William Aſcough*, and other Juſtices of the Court of Common Pleas: And of the Kings Bench, [l] Sir *Iohn Iune*, [m] Sir *Iohn Hody*, [n] Sir *Iohn Forteſcue*, [o] Sir *Iohn Markham*, [p] Sir *Thomas Billing*, and other excellent men flouriſhed in his time.

The deceaſes of his Contemporanes.

[a] He died 27. *H.* 6.
[b] He died 39. *H.* 6.
[c] Died 11. *E.* 4.
[d] Died 16. *H.* 7.
[e] Died 7. *E.* 4.
[f] Over-lived our Author.
[g] Survived him alſo.
[h] Died 23. *H.* 6.
[i] Survived our Author.
[k] Died 32. *H.* 6.
[l] Died 18. *H.* 6.
[m] Died 20. *H.* 6.
[n] Removed 1. *E.* 4.
[o] Removed 8. *E.* 4.
[p] Died 21. *E.* 4.

And of worldly bleſſings I account it not the leaſt, that in the beginning of my ſtudie of the Lawes of this Realme, the Courts of Juſtice, both of Equitie and of Law, were furniſhed with men of excellent Judgement, Gravitie, and Wiſdome; As in the Chancerie, Sir *Nicholas Bacon*, and after him Sir *Thomas Bromley*. In the Exchequer Chamber, the Lord *Burghley*, Lord high Treaſurer of England, and Sir *Walter Mildemay* Chancellor of the Exchequer. In the Kings Bench, Sir *Chriſtopher Wray*, and after him Sir *Iohn Popham*. In the Common Pleas, Sir *Iames Dyer*, and after him Sir *Edmund Anderſon*. In the Court of Exchequer, Sir *Edward Saunders*, after him Sir *Iohn Ieffery*, and after him Sir *Roger Manwood*, men famous (amongſt many others) in their ſeverall places, and flouriſhed, and were all honoured and preferred by that thrice noble and vertuous Queene *Elizabeth* of ever bleſſed memory. Of theſe reverend Judges, and others their aſſociates, I muſt ingenuouſly confeſſe, that in her reigne I learned many things which in theſe Inſtitutes I have publiſhed: And of this Queene I may ſay, that as the Roſe is the queen of flowers, and ſmelleth more ſweetly when it is pluckt from the branch: ſo I may ſay and juſtifie, that ſhe by juſt deſert was the Queene of Queenes, and of Kings alſo, for Religion, Pietie, Magnanimitie, and Juſtice; who now by remembrance thereof, ſince Almighty God gathered her to himſelfe, is of greater honour and renowne, than when ſhe was living in this world. You cannot queſtion what Roſe I meane; for take the Red or the White, ſhe was, not only by royall deſcent, and inherent Birthright, but by Roſiall Beautie alſo, heire to both.

Queen *Elizab.*

And

And though wee wiſh by our labours (which are but *Cunabula Legis*, the cradles of the Law) Delight and Profit to all the Students of the Law, in their beginning of their ſtudie, (to whom the firſt part of the Inſtitutes is intended) yet principally to my loving friends, the Students of the honourable and worthy Societies of the Inner Temple, and Cliffords Inne, and of Lyons Inne alſo, where I was ſometime Reader. And yet of them more particularly to ſuch as have beene of that famous Univerſitie of Cambridge, *alma mea mater*. And to my much honoured and beloved Allies and Friends of the Counties of Norfolke, my deare and native Country; and of Suffolke, where I paſſed my middle age; and of Buckinghamſhire, where in my old age I live. In which Counties, wee out of former Collections compiled theſe Inſtitutes. But now returne wee againe to our Author.

Inner Temple. Cliffords Inne. Lyons Iane.

He maried with *Iohan* one of the daughters and coheires of *William Burley* of Broomeſcroft Caſtle in the County of Salop, a Gentleman of ancient deſcent, and bare the Armes of his Familie, Argent, a Feſſe Checkie Or and Azure, upon a Lion Rampant Sable, armed Gules. And by her had three ſons, Sir *William*, *Richard* the Lawyer, and *Thomas*.

His mariage. His iſſue.

In his life time, he, as a loving Father and a wiſe man, provided matches for theſe three ſons, in vertuous and ancient Families, that is to ſay, for his ſon Sir *William*, *Ellen* Daughter and Coheire of *Thomas Welſh* Eſquire, who by her had iſſue *Iohan* his only childe, maried to Sir *Iohn Aſton* of Tixall Knight: And for the ſecond wife of Sir *William*, *Mary* the Daughter of *William Whittington* Eſquire, whoſe poſteritie in Worceſterſhire flouriſh to this day. For *Richard Littleton* his ſecond ſon, to whom he gave good poſſeſſions of inheritance, *Alice* daughter and heire of *William Winsbury* of Pilleton-hall in the County of Stafford, Eſquire, whoſe poſteritie proſper in Staffordſhire to this day. And for *Thomas* his third ſon, to whom he gave good poſſeſſions of inheritance, *Anne* daughter and heire of *Iohn Botreaux* Eſquire, whoſe poſteritie in Shropſhire continue proſperouſly to this day. Thus advanced he his poſteritie, and his poſteritie by imitation of his Vertues have honoured him.

The eſtabliſhment of his poſteritie, by the matches of his three ſonnes, with Vertue & good Bloud.

He gave poſſeſſions of inheritance to his younger ſons, for their better advancement.

He made his laſt Will and Teſtament the 22. day of Auguſt in the 21. yeare of the reigne of King *Edward* the fourth, whereof he made his three ſons, a Parſon, a Vicar, and a Servant of his executors, and conſtituted ſupervifor thereof, his true and faithfull friend *Iohn Alcocke* Doctor of Law, of the famous Univerſitie of Cambridge, then Biſhop of Worceſter, a man of ſingular Pietie, Devotion, Chaſtitie, Temperance, and Holineſſe of life, who amongſt other of his pious and charitable works founded Ieſus Colledge in Cambridge, a fit and faſt friend to our honourable and vertuous Iudge.

His laſt Will. His Executors. His Supervifor.

He left this life in his great and good age, on the 13. day of the month of Auguſt, in the ſaid 21. yeare of the reigne of King *Edward* the fourth: For it is obſerved for a ſpeciall bleſſing of Almighty God, that few or none of that profeſſion die *Inteſtatus & improles*, without Will and without Childe; which laſt Will was proved the 8. of November following in the Prerogatiue Court of Canterbury, for that he had *Bona notabilia* in divers Dioceſſes. But yet our Author liveth ſtill in *ore omnium iuris prudentium*.

His age. His departure

v. D. 163. p. 54. Pridiaux

Littleton is named in 1. *H.* 7. and in 21. *H.* 7. Some doe hold, that it is no error

1. *H.* 7. *fol.* 27. 21. *H.* 7. *f.* 32. *b.*

error either in the Reporter or Printer; but that it was *Richard* the ſon of our Author, who in thoſe dayes profeſſed the Law, and had read upon the ſtatute of *W.* 2. *quia multi per malitiam*, and * unto whom his Father dedicated his Book; And this *Richard* died at Pilleton hall in Staffordſh. in 9. *H.* 8.

W. 2. *cap.* 12.
* See *Littleton Sect.* 749.

His Sepulchre.

The body of our Author is honorably interred in the Cathedrall Church of Worceſter, under a faire Tombe of Marble, with his ſtatue or portrature upon it, together with his owne match, and the matches of ſome of his Anceſtors, and with a memoriall of his principall Titles, and out of the mouth of his ſtatue proceedeth this praier, *Fili Dei miſerere mei*, which he himſelfe cauſed to be made and finiſhed in his life time, and remaineth to this day. His wife *Iohan* Lady *Littleton* ſurvived him, and left a great inheritance of her Father, and *Ellen* her Mother, daughter & heire of *Iohn Grendon* Eſquire, and other her Anceſtors, to Sir *William Littleton* her ſon.

When this Worke was publiſhed.

This Work was not publiſhed in print, either by our Author himſelfe, or *Richard* his ſon, or any other, untill after the deceaſes both of our Author, and of *Richard* his ſon. For I finde it not cited in any Booke or Report, before Sir *Anthony Fitzherbert* cited him in his *Natura Brevium*; who publiſhed that Booke of his *Natura Brevium* in 26. *H.* 8. Which Work of our Author, in reſpect of the excellencie thereof, by all probabilitie ſhould have beene cited in the Reports of the reignes of *E.* 5. *R.* 3. *H.* 7. or *H.* 8. or by *S. Iermyn* in his booke of the Doctor and Student, which he publiſhed in the three and twentieth yeare of *H.* 8. if in thoſe dayes our Authors Booke had beene printed. And yet you ſhall obſerve, that Time doth ever give greater authoritie to Works and Writings that are of great and profound learning, than at the firſt they had. The firſt impreſſion that I finde of our Authors Booke was at Roan in France, by *William le Tailier* (for that it was written in French) *Ad inſtantiam Richardi Pinſon*, at the inſtance of *Richard Pinſon* the Printer of King *H.* 8. before the ſaid Booke of *Natura Brevium* was publiſhed; and therefore upon theſe and other things that wee have ſeene, wee are of opinion, that it was firſt printed about the foure and twentieth yeare of the reigne of King *H.* 8. ſince which time he hath beene commonly cited, and (as he deſerves) more and more highly eſteemed.

F. N. B. 212. c.

Nota.

When this Work was firſt imprinted.

His Picture.

He that is deſirous to ſee his picture, may in the Churches of Frankley and Hales Owen ſee the grave and reverend countenance of our Author, the outward man, but he hath left this Booke, as a figure of that higher and nobler part, that is, of the excellent and rare endowments of his minde, eſpecially in the profound knowledge of the fundamentall Laws of this Realm. He that diligently reads this his excellent Work, ſhall behold the childe and figure of his minde, which the more often he beholds in the viſiall line, and well obſerves him, the more ſhall he juſtly admire the judgement of our Author, and increaſe his owne. This only is deſired, that hee had written of other parts of the Law, and ſpecially of the rules of good pleading (the heart-ſtring of the Common Law) wherein he excelled: for of him might the ſaying of our Engliſh Poet be verified;

The figure of his Minde.

Chaucer.

There to he could indite and maken a thing,
There was no Wight could pinch at his writing.

So

So farre from exception, as none could pinch at it. This skill of good pleading he highly in this Work commended to his ſonne, and under his name to all other Students ſons of his Law. He was learned alſo in that Art, which is ſo neceſſary to a compleat Lawyer, I mean Logicke, as you ſhall perceive by reading of theſe Inſtitutes, wherein are obſerved his Syllogiſmes, Inductions, and other arguments; and his Definitions, Deſcriptions, Diviſions, Etymologies, Derivations, Significations, and the like. Certaine it is, that when a great learned man (who is long in making) dieth, much learning dieth with him. Good pleading. Logicke. *Seneca.*

That which we have formerly written, that this Booke is the ornament of the Common Law, and the moſt perfect and abſolute Work that ever was written in any humane Science; and in another place, that which I affirmed and tooke upon mee to maintaine againſt all oppoſites whatſoever, that it is a Work of as abſolute perfection in his kinde, and as free from errour as any booke that I have knowne to be written of any humane learning, ſhall to the diligent and obſerving Reader of theſe Inſtitutes be made manifeſt, and wee by them (which is but a Commentary upon him) be deemed to have fully ſatisfied that, which wee in former times have ſo confidently affirmed and aſſumed. His greateſt commendation, becauſe it is of greateſt profit to us, is, that by this excellent Work, which he had ſtudiouſly learned of others, he faithfully taught all the profeſſors of the Law in ſucceeding ages. The victory is not great to overthrow his oppoſites, for there was never any learned man in the Law, that underſtood our Author, but concurred with mee in his commendation: *Habet enim iuſtam veneratione quicquid excellit*; For whatſoever excelleth hath juſt honour due to it. Such as in words have endevoured to offer him diſgrace, never underſtood him, and therefore wee leave them in their ignorance, and wiſh that by theſe our Labours they may know the truth, and be converted. But herein wee will proceed no further: For, *Stultum eſt abſurdas opiniones accuratius refellere*, It is meere folly to confute abſurd opinions with too much curioſitie. The commendation of his Worke. *Lib. 2. fo. 67. Epiſt. 10. li. 10.* *Cicero,* *Ariſtotle.*

And albeit our Author in his three Bookes cites not many authorities, yet he holdeth no opinion in any of them, but is proved and approved by theſe two faithfull witneſſes in matter of Law, Authoritie, and Reaſon. Certaine it is, when hee raiſeth any queſtion, and ſheweth the reaſon on both ſides, the latter opinion is his owne, and is conſonant to Law. Wee have knowne many of his caſes drawne in queſtion, but never could finde any judgement given againſt any of them, which wee cannot affirme of any other Booke or Edition of our Law. In the reigne of our late Soveraigne Lord King *Iames* of famous and ever bleſſed memory, it came in queſtion upon a demurrer in Law, whether the releaſe to one treſpaſſer ſhould be availeable or no to his companion. Sir *Henry Hobart* that honourable Judge, and great Sage of the Law, and thoſe reverend and learned Judges, *Warburton*, *Winch*, and *Nichols* his companions, gave judgement according to the opinion of our Author, and openly ſaid, That they owed ſo great reverence to *Littleton*, as they would not have his Caſe diſputed or queſtioned: and the like you ſhall finde in this part of the Inſtitutes. Noca. *V. poſt. 232. A.* Mich. 13. Iac. in Communi Banc. inter Cock & Honours. *Pl. C. 58. A. B.*

Thus

Thus much (though not ſo much as his due) have wee ſpoken of him, both to ſet out his life, becauſe he is our Author, and for the imitation of him by others of our profeſſion.

What is endevored by theſe Inſtitutes.

Wee have in theſe Inſtitutes endevoured to open the true ſenſe of every of his particular Caſes, and the extent of every of the ſame either in expreſſe words, or by implication, and where any of them are altered by any latter Act of Parliament, to obſerve the ſame, and wherein the alteration conſiſteth. Certaine it is, that there is never a period, nor (for the moſt part) a word, nor an &c. but affordeth excellent matter of learning. But the module of a Preface cannot expreſſe the obſervations that are made in this worke, of the deepe Judgement and notable Invention of our Author. Wee have by compariſon of the late and moderne impreſſions with the originall print, vindicated our Author from two injuries; Firſt, from divers corruptions in the late and modern prints, and reſtored our Author to his owne: Secondly, from all additions and incroachments upon him, that nothing might appeare in his worke but his owne.

The benefit of theſe Inſtitutes

Our hope is, that the young Student, who heretofore meeting at the firſt, and wraſtling with as difficult termes and matter, as in many yeeres after, was at the firſt diſcouraged, as many have beene, may by reading theſe Inſtitutes, have the difficultie and darkneſſe both of the Matter, and of the Termes and words of Art in the beginnings of his ſtudie facilitated and explained unto him, to the end he may proceed in his ſtudie cheerfully, and with delight; and therefore I have termed them Inſtitutes, becauſe my deſire is, they ſhould inſtitute and inſtruct the ſtudious, and guide him in a ready way to the knowledge of the nationall Lawes of England.

Wherefore called Inſtitutes.

Wherefore publiſhed in Engliſh.

This part wee have (and not without preſident) publiſhed in Engliſh, for that they are an introduction to the knowledge of the nationall lawes of the Realme; a work neceſſary, and yet heretofore not undertaken by any, albeit in all other profeſſions there are the like. Wee have left our Author to ſpeake his owne language, and have tranſlated him into Engliſh, to the end that any of the Nobilitie, or Gentrie of this Realme, or of any other eſtate, or profeſſion whatſoever, that will be pleaſed to read him and theſe Inſtitutes, may underſtand the language wherein they are written.

Lib. 3. proef.

I cannot conjecture that the generall communicating of theſe Lawes in the Engliſh tongue can work any inconvenience, but introduce great profit, ſeeing that *Ignorantia Iuris non excuſat*, Ignorance of the Law excuſeth not. And herein I am juſtified by the Wiſdome of a Parliament; the words whereof be, *That the Lawes and Cuſtomes of this Realme the rather ſhould be reaſonably perceived and knowne, and better underſtood by the tongue uſed in this Realme, and by ſo much every man might the better governe himſelfe without offending of the Law, and the better keepe, ſave, and defend his heritage and poſſeſſions. And in divers Regions and Countries where the King, the Nobles, and other of the ſaid Realme have beene, good governance and full right is done to every man, becauſe that the Lawes and Cuſtomes be learned and uſed in the Tongue of the Countrey*: as more at large by the ſaid Act, and the purview thereof may appeare: *Et neminem oportet eſſe ſapientiorem Legibus*, No man ought to be wiſer than the Law.

Regula.

36. E. 3. cap. 15.

Regula.

And

And true it is that our Bookes of Reports and ſtatutes in ancient times were written in ſuch French as in thoſe times was commonely ſpoken and written by the French themſelues. But this kind of French that our Author hath vſed is moſt commonly written and read, and very rarely ſpoken, and therefore cannot be either pure, or well pronounced. Yet the change thereof (hauing beene ſo long a cuſtomed) ſhould be without any profit, but not without great danger and difficulty: For ſo many ancient Termes and words drawne from that legall French, are growne to be *Vocabula artis*, Vocables of Art, ſo apt & ſignificant to expreſſe the true ſenſe of the Lawes, & are ſo wouen into the lawes themſelues, as it is in a manner impoſſible to change them, neither ought legall tearmes to be changed.

Our Authors kinde of French.

36. E 3. vbi ſupr.

In Schoole Diuinity, and amongſt the Gloſſographers and Interpreters of the Ciuill and Cannon Lawes, in Logick and in other liberall Sciences, you ſhall meet with a whole Army of words, which cannot defend themſelues *in Bello Grammaticali*, in the Grammaticall Warre, and yet are more ſignificant, compendious, and effectuall to expreſſe the true ſenſe of the matter, than if they were expreſſed in pure Latine.

This Worke we haue called The firſt part of the Inſtitutes, for two cauſes: Firſt, for that our Author is the firſt booke that our Student taketh in hand. Secondly, for that there are ſome other parts of Inſtitutes not yet publiſhed, (*viz.*) The ſecond part being a Commentary vpon the Statute of *Magna Charta*, *weſtm.* 1. and other old Statutes. The third part treateth of Criminall cauſes and Pleas of the Crowne: which three parts we haue by the goodneſſe of Almighty God already finiſhed. The fourth part we haue purpoſed to be of the Iuriſdiction of Courts; but hereof we haue onely collected ſome materialls towards the raiſing of ſo great and honourable a Building. Wee haue by the goodneſſe and aſſiſtance of Almighty God brought this twelfth Worke to an end: In the eleuen Bookes of our *Reports* wee haue related the opinions and iudgements of others; but herein we haue ſet downe our owne.

Wherefore called the firſt part.

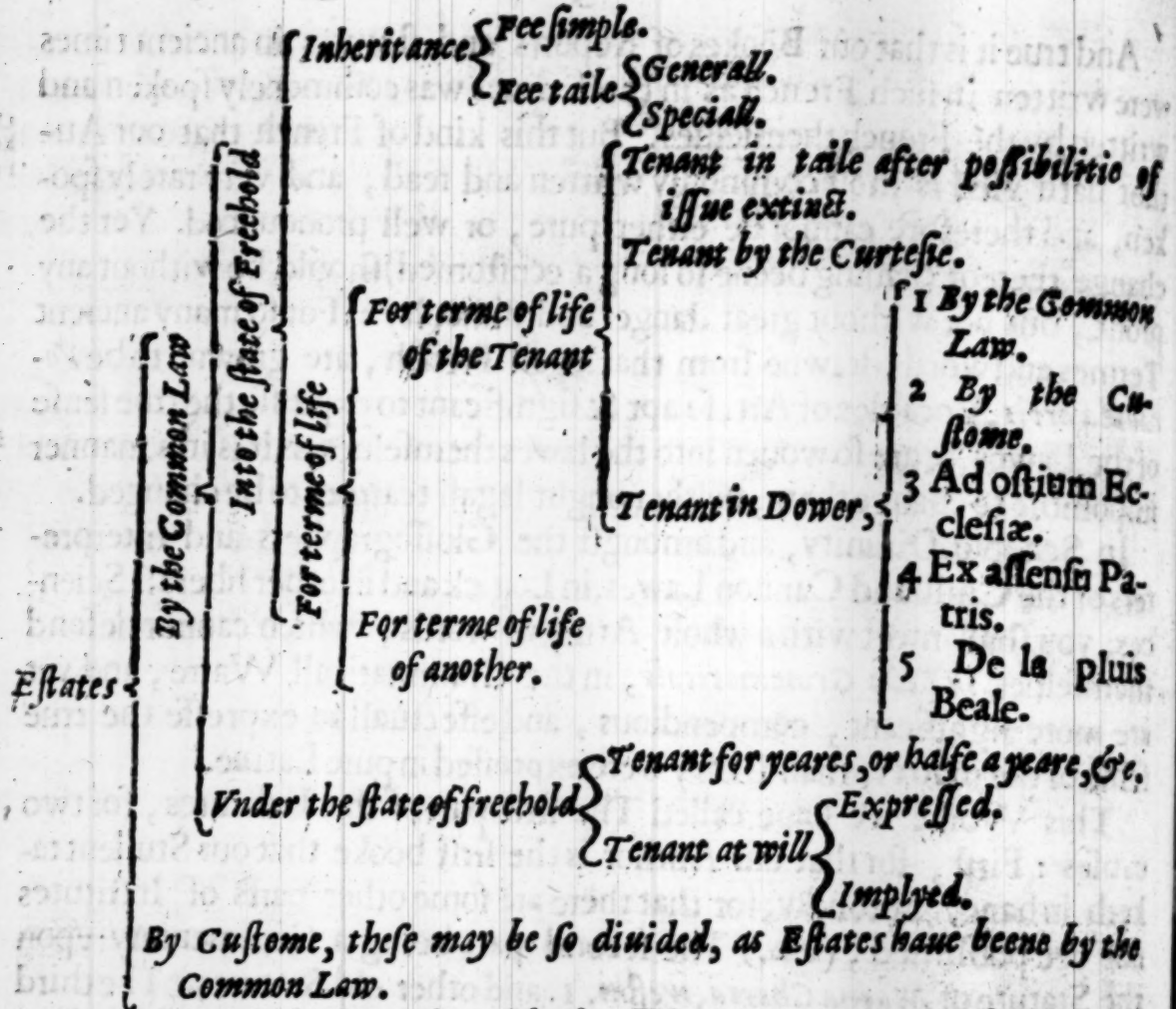
Before I entred into any of theſe parts of our Inſtitutes, I acknowledging mine owne weakneſſe and want of iudgement to vndertake ſo great Workes, directed my humble Suit and Prayer to the Author of all Goodneſſe and Wiſdome, out of the Booke of *Wiſdome*; *Pater & Deus miſericordiæ, da mihi ſedium tuarum aſſiſtricem ſapientiam, mitte eam de Cœlis ſanctis tuis & a ſede magnitudinis tuæ, vt mecum ſit & mecum laboret, vt ſciam quid acceptum ſit apud te*, Oh Father and God of mercie, giue me wiſdome, the Aſſiſtant of thy ſeates; Oh, ſend her out of thy holy Heauens, and from the ſeat of thy Greatneſſe, that ſhe may be preſent with me and labour with mee, that I may know what is pleaſing vnto thee, *Amen.*

Lib. Sap. ca. 9. ver. 4. 10.

Our Author hath diuided his whole Worke into three Bookes: In his firſt he hath diuided Eſtates in Lands and Tenements, in this manner; For, *Res per diuiſionem melius aperiuntur.*

Bradion.

A Figure of the diuision of Possessions.



Our Authour dealt onely with the Estates and termes abouesaid; Somewhat Wee shall speake of Estates by force of certaine Statutes, as of Statute Merchant, Statute Staple, and *Elegit*, (whereof our Authour intended to haue written) and likewise to Executors to whom lands are deuised for payment of debts, and the like.

Regula. Iniuiic est, parte vna perspecta, tota re non cognita, de ea judicare.

I shall desire, That the learned Reader will not conceiue any opinion against any part of this painfull and large Volume, vntill hee shall haue aduisedly read ouer the whole, and diligently searched out and well considered of the seuerall Authorities, Proofes, and Reasons which wee haue cited and set downe for warrant and confirmation of our opinions throwout this whole worke.

Mine aduice to the Student is, That before hee reade any part of our Commentaries vpon any Section, that first he reade againe and againe our Author himselfe in that Section, and doe his best endeuours, first of himselfe, and then by conference with others, (which is the life of Study) to vnderstand it, and then to reade our Commentarie thereupon, and no more at any one time, than he is able with delight to beare away, and after to meditate thereon, which is the life of reading. But of this Argument wee haue for the better direction of our Student in his Study, spoken in our Epistle to our first Booke of *Reports*.

And albeit the Reader shall not at any one day (doe what he can) reach to the meaning of our Author, or of our Commentaries; yet let him no way discourage himselfe, but proceed; for on some other day, in some other place, that doubt will bee cleared. Our Labours herein are drawne out to this great Volume, for that our Authour is twice repeated, once in French, and againe in English.

THE FIRST PART of the Institutes of the LAWES of *England*.

CHAP. I. *Fee simple.* Sect. I.

TEnant en fee simple est celuy q; ad fees ou tenements a tener a luy et a ses heires a touts tours. Et est appel en Latin, Feodum simplex, quia feodum idem est quod hæreditas, & simplex idem est quod legitimum vel purum, & sic feodum simplex idē est quod hæreditas legitima, vel hereditas pura. Car si hõe voile purchaser terres ou Tenements en Fée simple, il couient de auer ceux parolx en son purchase, A auer et tener a luy et a ses hẽes: Car ceux parolx (ses heires) font lestate den-heritance. Car si home

TEnant in Fee simple is hee which hath Lands or Tenements to hold to him and his heires for euer. And it is called in Latine, *Feodum simplex*, for *Feodum* is the same that Inheritance is, and *Simplex* is as much to say, as lawfull or pure. And so *Feodum simplex* signifies a lawfull or pure Inheritance. For if a man would purchase lands or tenements in fee simple, it behoueth him to haue these words in his purchase, To haue and to hold to him and to his Heires: for these words (his Heires) make the Estate of the Inheritance, For if a man pur-

Tenant. In Latine Tenens, is derived of the verb Teneo, and hath in the law fiue significations. 1. It signifies the estate of the Land, as when the Tenant in a præcipe of land, pleads, Quod non tenet, &c. this is as much as to say, That he hath not seisin of the Freehold of the Land in question. And in this sense doth our author take it in this places therefore he saith, tenant in fee simple is he which hath lãds to hold to him & his heires. 2. It signifieth the Tenure or the seruice whereby the lands & tenements been holden, and in this sense it is said in the writ of right, quæ clamat tenere de te p liberũ seruitium, &c. And in this signification he is called a Tenãt or holder, because all the lands & tenements in England in the hands of subiects, are holden mediately or immediately

vide sect. 93

8.H.7.12. 18.E.3.35. 24.E.3.65. 66. 44.E.3.5. 48.E.3.9.

pl. C. 498. C.

of the King. For in the law of England we haue not properly, Allodium, That is, any Subiects Land that is not holden, vnlesse you will take Allodium, for Ex solido, as it is often taken in the Booke of Domesday: and tenants in Fee simple are there called Alodarij or Aloarij. And he is called a Tenant, because he holdeth of some superior Lord by some seruice. And therefore the King in this sense cannot be sayd to be a Tenant, because he hath no superior but God Almighty; Prædium domini regis est directum dominium, cuius nullus Author est nisi Deus. And as Bracton saith, Omnis quidem sub eo, & ipse sub nullo, nisi tantum sub Deo. The Possessions of the King are called Sacra Patrimonia, & Dominica Coronæ regis. But though a Subiect hath not properly Directum, yet hath he Vtile Dominium. Of these Tenants our Author speaketh in his second Booke. Also Tenere signifieth performance, as in the Writ of Couenant, Quod teneat conuentionem, that is, That he hold or performe his Couenant. And likewise it signifieth to be bound, as it is said in euery common Obligation, teneri & firmiter obligari. Lastly, It signifieth to deeme or iudge, as in 38.E.3.c.4. It shall be holden for none (that is) iudged or deemed for none and so we commonly say, it is holden in our Bookes. And these seuerall significations doe properly belong to our Tenant in Fee simple. For he hath the estate of the Land, he holdeth the land of some superiour Lord, & is to performe the seruices due, and thereunto he is bounden by doome & iudgement of Law. Of the seuerall estates of Land, our Author treateth in his first booke, and beginneth with Fee simple, because all other estates and interests are deriued out of the same.

Mir. des Iustic. c. 1. sect. 3. Customs de Normandy. cap. 28.

Lect. de. 16. H. 2. cap. 5. 14. El Dy. 313. 2. Lib. 1. 47. in Alton Woods case.

Bract lib. 1. cap. 8.

¶ *Fee simple.* Fee commeth of the French Fief, (i) prædium beneficiarium, and legally signifieth Inheritance, as our Author himselfe hereafter expoundeth it. And Simple is added, for that it is descendible to his heires generally, that is, simply, without restraint to the heires of his body, or the like. Feodum est quod quis tenet ex quacunque causa, siue sit tenementum, siue redditus, &c. In Domesday it is called Feudum. (a) Of Fee simple, it is commonly holden, that there be three kinds, viz. Fee simple absolute, Fee simple conditionall, and Fee simple qualified, or a base fee. But the more genuine and apt diuision, were to diuide Fee, that is, Inheritance, into three parts viz. Simple or absolute, Conditionall, and qualified or base. For this word (Simple) properly excludeth both conditions and limitations, that defeat or abridge the fee. * Hereby it appeareth, that Fee in our legall vnderstanding signifieth, that the land belongs to vs & our heires, in respect whereof the owner is said to be seised in fee, and in this sense the King is said to be seised in fee. (b) It is also taken, as it is holden of another by seruice, and that belongeth onely to the Subiect; Item dicitur feodū alio modo eius qui alium feoffat, & qd' quis tenet ab alio, vt si sit qui dicat, talis tenet de me tot feoda per seruitium militare. And Fleta saith, Poterit vnus tenere in feodo quoad seruitia, sicut dominus capitalis, & non in Dominico, alius in feodo & dominico, & non in seruitio, sicut libere tenens alicuius. (c) And therefore if a stranger claime a Seigniory, and distreine & auow for the seruice, the Tenant may plead, That the tenancy is extra feodum, &c of him (that is) out of the Seigniory, or not holden of him that claimeth it, but he cannot plead Hors de son fee, vnlesse he take the tenancy, that is, the state of the Land vpon him. Of Fee in the first sense our Author treateth in this first Booke; and as it is taken in the second sense, in his second booke: and of the third you shall read in our Author, Sect. 13, 643, 644, 645. and plentifully in our books quoted in the margent.

Gr. T. Brit. Com. Ley. 157.

Brit. fo. 83. 209. 208. Fleta lib. 5. ca. 5. & lib. 3. cap. 8. Bract. li. 4. 263. Domesday. Mir. des Iust. ca. 1. sect. 15. 17. Bract. l. 2. c. 5. 6. 7. Brit. ca. 34. fo. 89. Flet. lib. 3. ca. 2. 8. & 9. & lib. 5. cap. 5.

(a) Bract. f. 263. & 207. Pl. Com. in Walsc. cas. 7. H. 4. 46. 8. H. 4. 15. 18. H. 8. 3. b. 27. 21. 33. 18. Ass. 5. 18. Ed. 3. 40. 24. E. 3. 28. y. Ed. 4. 18. 16. H. 7. 4. 10. F. 3. Account 56. 22. R. 2. Disc. 50. 12. Ed. 4. 3. 15. E. 4. 8. Dy. 8. El. 252. 253. 12. H. 8. 8. 4. H. 7. 2. The Case of a person which hath a qualified fee. see in the title of Desc.

* Vide Sect. 4.

(b) Bract. l. 4. f. 263. Flet. l. 5. c. 5. Brit. fo. 205. 207.

(c) 2. Ass. p. 4. 12. Ass. 38. 12. E. 3. tit. Hors de son fee 28. 28. Ass. 41. 7. H. 4. 30. 2. H. 6. 1.

Terres ou Tenements. Here is to be obserued, That a man may haue a Fee simple in three kinds of hereditaments, viz. Reall, Personall, and Mixt: Reall, as lands and Tenements, whereof our Author here speaketh: Personall, King Edward the first in the thirteenth yeare of his Reigne, Concessit Edmundo fratri suo charissimo, quod ipse & hæredes sui habeant ad requisitionem suam in Cancellaria nostra & hæredum nostrorum Iusticiarios

Ket. pas 13. E. I. Pl. C. 58. a.

ciarios ad placita foreſtarum quas idem Frater noſter habet ex dono domini Regis Henrici patris noſtri ſecundum aſſiſ. foreſtæ tenend', &c. In this caſe the grantee and his heires had a perſonall inheritance in making of a requeſt to haue Letters patents of Commiſſion to haue Iuſtices aſſigned to him to heare and determine of the pleas of the foreſts, and concerneth neither lands or tenements. And ſo it is if an Annuity be granted to a man and his heires, It is a fee ſimple perſonall, & ſic de ſimilbus. And laſtly hereditaments mixt both of the realty and perſonalty. As the Abbot of Whitbie in the County of Yorke hauing a foreſt of the gift of William of Percis founder of that Abby, and by the Charters of King Iohn and of other his progenitors, King Henry the third did grant Abbati & conuentui de Whitbye quod ipſi & eorum ſucceſſores in perpetuũ habeant viridarios ſuos proprios de libertate ſua de Whitb. eligend' de cetero in pleno com' Eborum prout moris eſt ad reſponſiones & preſentationes, faciend' de tranſgreſſionibus quas amodo fieri continget de venatione infra metas foreſtæ ſuæ de Whitbye quam habent ex donatione Willi. de Percey, & Alani de Percey, filij eius, & redditione & conceſſione domini Iohan. quondam regis Angliæ patris noſtri & confirmatione noſtra coram Iuſticiarijs noſtris itinerantibus ad placita foreſtæ in partibus illis & non alibi ſicut viridarij foreſtæ noſtræ huiuſmodi reſponſiones & preſentationes facere debent, & conſueuerunt. Et ſi contingat aliquos forinſiquos qui non ſunt de libertate predictorum Abbatis & conuẽtus tranſgreſſionem facere de venatione infra metas foreſtæ predictæ quos predicti viridarij attachiare non poſſunt Volumus & concedimus pro nobis & heredibus noſtris quod huiuſmodi tranſgreſſores per Iuſticiarios foreſtæ noſtræ vltra Trentã attachientur ad preſentationẽ viridariorũ prædict. ad reſpondendũ inde coram Iuſticiarijs noſtris itinerantibus ad placita foreſtæ noſtræ in partibus illis cum ibid. ad placitandũ venerint prout ſecundũ aſſiſam & conſuetudinem foreſtæ fuerint faciend. Which Charter was pleaded vpon the Claime made by the Abbot of Whitbye before Willoughby, Hungerford and Hanbury, Iuſtices in Eire in the foreſt of Pickering, which Eire began Anno 8. E. 3. And theſe before them were allowed. And when the King createth an Earle of ſuch a county or other place, To hold that dignity to him and his heires. This dignity is perſonall, and alſo concerneth lands and tenements. But of this matter more ſhall be ſaid in the next Chapter, Sect. 14. & 15.

Ro. Par. an. 47. H. 3. Rot. Pickering. 8. E. 3. Ro. 42.

¶ *Et eſt appel en Latine feodum ſimplex, quia feod' idem eſt, quod hereditas.* Here Littleton himſelfe teacheth the ſignification of feodum, according to that which hath bin ſaid, which onely is to be applied to fee ſimple pure and abſolute. And this and all his other interpretations of words and Etimologies throughout all his three bookes (wherein the ſtudious Reader will obſerue many) are perſpicuous, and euer per notiora & nunqam ignotum per ignotius, and are moſt neceſſary, for ignoratis terminis ignoratur & ars.

Bract. lib. cap. 9. fo. 263. Brit. ca. 32. & 79. For interpretation of words and Etymologies. Vid. Sect. 9. 18. 95. 116. 119. 135. 154. 164. 174. 184. 186. 194. 204. 234. 267. 268. 332. 337. 424. 580. 592. 645. 689. 733.

¶ *Simplex idem eſt quod legitimum vel purum*, hereof hee treateth onely in this place. And Litt. ſaith well, that Simplex idem eſt quod purum. Simplex enim dicitur quia ſine plicis, & purum dicitur, quod eſt merum & ſolum ſine additione. Simplex donatio & pura eſt vbi nulla addita eſt conditio ſiue modus, ſimplex enim datur quod nullo additamento datur.

Bract. lib. 2. ca. 39. fo. 92. 62. b. lib. 4. ca. 28. Fleta. lib. 3. ca. 8. Bract. lib. 2. ca. 5. &c. Brit. ca. 34.

¶ *Hereditas legitima vel hereditas pura.* And therefore it is well ſaid, quod donationum alia ſimplex & pura, quæ nullo iure civili vel naturali cogente, nullo precedente metu vel intercedente ex mera gratuitaque libertate donantis procedit, & vbi nullo caſu velit donator ad ſe reuerti quod dedit, alia ſub modo conditione vel ob cauſam, in quibus caſibus non proprie ſit, donatio, cum donator, id ad ſe reuerti velit, ſed quedam potius feodalis dimiſſio alia abſoluta & larga, alia ſtricta & coarctata ſicut certis heredibus quibuſdam a ſucceſſoribus excluſis, &c. And therefore ſeeing Fee ſimple is hereditas legitima vel pura, it plainly confirmeth that the diuiſion of fee is by his authority rather to be diuided as is afore ſaid than fee ſimple. And he ſaith well in the diſiunctiue legitima vel pura, for euery fee ſimple is not Legitimum. For a diſſeiſor, abator, intruder, vſurper &c. haue a fee ſimple, but it is not a lawfull fee. So as euery man that hath a fee ſimple, hath it either by right or by wrong. If by right, then he hath it either by purchaſe or diſcent. If by wrong, then either by diſſeiſin, intruſion, abatement, vſurpation. &c. In this Chapter he treateth onely of a lawfull fee ſimple, and diuideth the ſame as is afore ſaid.

Perk: P. C: 6: 58: 73.

Fleta. lib. 3. ca. 2.

¶ *Car ſi home purchaſe.* Perſons capable of purchaſe are of two ſorts, perſons naturall created of God, as I. S. I. N. &c. and perſons incorporate or politique created by the policy of man, (and therefore they are called bodies politique) and theſe be of two ſorts, viz. either ſole, or aggregate of many: againe aggregate of many, either of all perſons capable, or of one perſon capable, and the reſt incapable or dead in law, as in the Chapter of Diſcontinuance, Sect. 57. ſhall be ſhewed. Some men haue capacitie to purchaſe, but not abilitie to hold. Some capacity to purchaſe and abilitie to hold, or not to hold, at the election of them or others. Some capacity to take and to hold. Some neither capacity to take nor to hold. And ſome ſpecially diſabled to take ſome particular thing.

Vid. Sect. 57. Who haue ability to grãt. Perſons capable of purchaſe.

If an alien Chriſtian or infidell purchaſe houſes, lands, tenements, or hereditaments to him

11. Eliz. Dier 283. 11. H. 4. 20. & 26. 7. E. 4. 29.

and his heires, albeit he can haue no heires, yet he is of capacitie to take a fee simple but not to hold. For vpon an office found, the king shall haue it by his prerogatiue, of whom soeuer the land is holden. And so it is if the alien doth purchase land & die, the law doth cast the freehold and inheritance vpon the King. If an alien purchase any estate of freehold in houses, lands, tenements, or hereditaments, the King vpon office found shall haue them. If an alien be made Denizen & purchase lands and die without issue, the lord of the fee shall haue the escheat, and not the King. But as to a lease for yeares, there is a diuersitie betweene a lease for yeares of a house for the habitation of a marchant stranger being an alien, whose king is in league with ours, and a lease for yeares of lands, meadowes, pastures, woods, and the like. For if he take a lease for yeares of lands, medowes, &c. vpon office found, the king shall haue it. But of a house for habitation he may take a lease for yeares as incident to Commercery, for without habitation hee cannot merchandize or trade. But if he depart, or relinquish the realme, the king shall haue the lease. So it is if he die possessed thereof, neither his Executors or administrators, shall haue it, but the king: for he had it only for habitation as necessary to his trade or traffique, and not for the benefit of his Executor or administrator. But if the alien be no merchant, then the king shall haue the lease for yeares, albeit it were for his habitation, and so it is if he be an alien enemie. And all this was so resolued by the Judges assembled together for that purpose in the case of Sir Iames Croft, Pasch. 29. of the reigne of Queene Elizabeth. Also if a man commit felony, and after purchase lands and after is attainted, he had capacitie to purchase but not to hold it, for in that case the Lord of the fee shall haue the Escheat. And if a man be attainted of felony yet he hath capacity to purchase to him and to his heires, albeit he can haue no heire, but he cannot hold it, for in that case the king shall haue it by his prerogatiue, and not the Lord of the fee, for a man attainted hath no capacity to purchase (being a man ciuiliter mortuus) but onely for the benefit of the king, no more than the aliene hath. If any sole Corporation or aggregate of many, either Ecclesiasticall or temporall (for the words of the statute be Si quis religiosus vel alius) purchase Lands or Tenements in fee, they haue capacity to take but not to retaine (vnlesse they haue a sufficient Licence in that behalfe) for within the yeare after the alienation, the next Lord of the fee may enter, and if he doe not, then the next immediate lord from time to time to haue halfe a yeare, and for default of all the mesne Lords, then the king to haue the land so altened for euer, which is to be vnderstood of such inheritance as may be holden. But of such inheritances as are not holden, as Villeins, rents charges, commons, and the like, the king shall haue them presently by a fauourable interpretation of the statute. An Annuity granted to them is not mortmaine, because it chargeth the person onely. Some haue said that it is called mortmaine Manus mortua, quia possessio eorum est immortalis, manus pro possessione, & mortua pro immortali, and the rather for that by the lawes and statutes of the realme, all Ecclesiasticall persons are restrained to alien. * Others say it is called manus mortua per Antiphrasin, because bodies politque and corporate neuer die. Others say that it is called Mortmaine by resemblance to the holding of a mans hand that is ready to die, for that he then holdeth he letteth not go till he be dead. These and such others are framed out of wit and inuention, but the true cause of the name, and the meaning thereof, was taken from the effects, as it is expressed in the statute it selfe, per quod quæ seruitia ex huiusmodi feodis debentur, & quæ ad defensionem regni ab initio prouisa fuerunt indebite subtrahuntur, & capitales domini eschaetas suas amittunt, so as the lands were said to come to dead hands as to the Lords, for that by alienation in Mortmaine, they lost wholy their escheats, and in effect their knights seruices for the defence of the Realme, Wards, Marriages, Reliefes, and the like, and therefore was called a dead hand, for that a dead hand yeelds no seruice.

I passe ouer Villeins or Bondmen, who haue power to purchase lands, but not to reteyne them against their Lords, because you shall reade at large of them in their proper place in the Chapter of Villenage.

An infant or minor (whome we call any that is vnder the age of 21. yeares) haue without consent of any other, capacity to purchase, for it is intended for his benefit, and at his full age he may either agree thereunto, and perfect it, or without any cause to be alledged, waiue or disagree to the purchase, & so may his heires after him, if he agree not thereunto after his full age.

A man of non sane memory may without the consent of any other, purchase lands, but he himselfe cannot waiue it, but if he die in his madnesse, or after his memory recouered without agreement thereunto, his heire may waiue and disagree to the state, without any cause shewed, and so of an Ideot. But if the man of non san memory, recouer his memory, and agree vnto it, it is vnauoydable.

If an Abbot purchase lands to him and his successors without the consent of his Conuent, he himselfe cannot waiue it, but his successor may vpon iust cause shewed, as if a greater rent were reserued thereupon then the value of the land, or the like, but he cannot waiue it vnlesse it be vpon iust cause, & sic de similib⁹ prælatus Ecclesiæ suæ conditione meliorare potest, deteriorare nequit. And in another place he saith, Est enim Ecclesia ciuilde conditionis, quæ fungitur vice minoris.

But

32.H.6.23.Pl.Com.483.

3.Mar.Br.tit.Denizen.23.

Pasch.29.Eliz.in Sir Iames Crofts case. Ro.194

49.Ass.pl.2.49.E.3.11.

Magna Carta.ca.36.
7.E.1.de religiosis.
W.2.13.E.1.ca.33.
15.R.2.ca.5.
23.H.8.ca.10.
39.Eliz.ca.5.
23.H.3.Ass.436.
29.Ass.p 17.Brit.f.32.
Flet.lib.3.cap.4.&.5.
19.E.2.tit.Vil.34.
29.E.3.Ibid.13.21.E.3.5.
4.H.6.9.19.H.6.3.65.
3.E.4.14.19.E.3.
Mortm.8.
34.H.6.37 19.H.6.63.
7.E.4.14.
* Pl.com.193.in Wrotesleyes case.

Le statut.de Religiosis. 7.E.1.

43.Ass.p.23.

Bract.lib.2,fo.12.&.32.

But no simile holds in euerie thing, according to the ancient saying, Nullum simile quatuor pedibus currit. (a) An Hermophradite may purchase according to that Sex which preuaileth. A feme couert cannot take any thing of the gift of her husband, but is of capacitie to purchase of others without the consent of her husband. And of this opinion was Littleton in our bookes, & in this booke Sect. 677. but her husband may disagree thereunto, & deuest the whole estate, but if he neither agree nor disagree, the Purchase is good; but after his death, albeit her husband agreed thereunto, yet she may without any cause to be alleaged waiue the same, and so may her heires also, if after the decease of her husband she her selfe agree not thereunto.

(b) A wife (Vxor) is a good name of Purchase, without a Christian name, and so it is, if a Christian name be added and mistaken, as Em for Emelyn, &c. for vtile per inutile non vitiatur. But the Quene, the Consort of the King of England, is an exempt person from the King by the Common Law and is of ability, and capacity to purchase and grant without the King. Of which see more at large, Sect. 206.

(c) The Parishioners or Inhabitants, or probi homines of Dale, or the Churchwardens, are not capable to purchase lands, but goods they are, vnlesse it were in ancient time when such grants were allowed.

(d) An ancient grant by the Lord to the Commoners in such a waste, that a way leading to their common should not be streighened, was good, but otherwise it is of such a grant at this day. (e) And so in ancient time a grant made to a Lord, & hominibus suis tam liberis quam nativis, or the like, was good, but they are not of capacitie to purchase by such a name at this day. But yet at this day if the King grant to a man to haue the goods and cattels de hominibus suis, or de tenentibus suis, or de residentibus infra feodum, &c. it is good, for there they are not named as purchasers or takers, but for another mans benefit, who hath capacitie to purchase or take. (f) And regularly it is requisite that the Purchaser be named by the name of Baptisme & his surname, and that speciall heed be taken to the name of Baptisme, for that a man cannot haue two names of Baptisme as he may haue diuers surnames. (g) And it is not safe in Writs, pleadings, grants, &c. to translate surnames into Latine. As if the surname of one be Fitzwilliam, or Williamson, if he translate him to filius Willi. if in truth his father had any other Christian name than William, the Writ, &c. shall abate, for Fitzwilliam or Williamson is his surname whatsoeuer Christian name his father had, therefore the Lawyer neuer translates surnames. And yet in some cases, though the name of Baptisme be mistaken, (as in the case before put of the wife) the grant is good. †

So it is if lands be giuen to Robert Earle of Pembroke where his name is Henrie, to George Bishop of Norwich, where his name is Iohn, and so of an Abbot, &c. for in these and the like cases there can be but one of that Dignitie or name. And therefore such a grant is good, albeit the name of Baptisme be mistaken. If by Licence lands bee giuen to the Deane and Chapter of the holy and indiuided Trinitie of Norwich, this is good, although the Deane be not named by his proper name, if there were a Deane at the time of the grant. but in pleading he must shew his proper name. And so on the other side, If the Deane & Chapter make a Lease without naming the Deane by his proper name, the Lease is good, if there were a Deane at the time of the Lease, but in pleading the proper name of the Deane must be shewed, and so is the Booke of 18. E. 4. to be intended, for the same Iudges in 15. E. 4. held the grant good to a Maior, Aldermen, and Commonaltie, albeit the Maior was not named by his proper name, but in pleading it must be shewed, as it is there also holden. If a man be baptized by the name of Thomas, and after at his Confirmation by the Bishop hee is named Iohn, hee may purchase by the name of his Confirmation. And this was the case of Sir Francis Gawdye, late chiefe Iustice of the Court of Common-pleas, whose name of baptisme was Thomas, and his name of Confirmation Francis, and that name of Francis by the aduice of all the Iudges in Anno 36. H. 8. he did beare, and after vsed in all his purchases and grants. (h) And this doth agree with our ancient bookes, where it is holden that a man may haue diuers names at diuers times, but not diuers Christian names. And the Court said, that it may be that a woman was baptized by the name of Anable, and 40. yeares after shee was confirmed by the name of Douce, and then her name was changed, and after shee was to bee named Douce, and that all purchases, &c. made by her by the name of Baptisme before her Confirmation remaine good, a matter not much in vse, nor requisite to be put in vre, but yet necessarie to be knowne. (i) But Purchases are good in many cases by a knowne name, or by a certaine description of the person without either Surname, or name of Baptisme, as Vxori I. S. as hath beene said, or primogenito filio, or secundo genito filio, &c. or filio natu minimo I. S. or seniori puero, or omnibus filiis or filiabus I. S. or omnibus liberis seu exitibus of I. S. or to the right heires of I. S.

(k) But if a man doe infranchise a Villein, cum tota sequela sua, that is not sufficient to infranchise his children borne before, for the incertaintie of the word sequela. (l) But regularly in Writs, the Demandant or Tenant is to be named by his Christian name and Surname, vnlesse it be in cases of some Corporations or bodies politique.

(a) 1.H.7. 16.7.H.4.17. 18.H.6.8. 39.E. 3.30. 15.E.4.fol.1.b.27.H.8.24.

(b) A name of purchase. 2.H.4.25. 1.H.5.8. 46.E.3.20. 12.Ass.18. 30.E.3.18. 1.Ass.11. 11.H.4.33. 9.E.4.49. 13.E.3.Ektoppel.231. F.N.B.97 2.

(c) 12.H.7.28. 37.H.6.30. 10.H.4.3.b. 30:35.

(d) 32.E.3. barre 261.

(e) 33.E.3.grant 83. 18.E.3.50. 12.Ass.35. 14.H.6.12. 34.Ass.p.11. 40.Ass.p.21.

(f) Bract.lib.4. tract.1.c.2. 20. Britton fol.121. 122. 3.E.3 78. 25.E.3.43. 26.Ass.61. 30.Ass.16. 46.E.3.22. 33.E.3.17. 3.H.6.25. 19.H.6.2. 30.H.6.1. 34.H.6.19. 11.H.4.27. 9.E.4.29. 5.E.4.46.65. 14.H.7.11. 20.Eliz. Dier 359. 8.E.3.436. 29.E.3.25. 1.H.4 3.H.6.26. 19.H 6.2. 3.H.6.19. 5.E.4.55. 27.H.8.11. 1.H.5.5. 18.E.3.32. 27.E.3.85. 8.E.3.427. 7.H.6.29. 9.H.5.9.

(g) 40.E.3.22. Fitzwilliam. 24.E.3.64. Fitzjohn. 36.E.3.24. Fitzrobert. 27.E.3.85. tit.grant 67. 18.E.3.23.24. 18.E.4. 8.b. 14.H.7.31,32. 13.E.4.8. 5.E.3.Voucher 179.27.E.3.85. where the proper name is mistaken.

(h) 22.E.4.bre.936. 12.R.2. feoffments 38. 9.E.3.14. 46.E.3.21. 3.H.6.26. 34.H.6.19. 1.H.7 29. 5.E.2 bre.745. 14.H.7.11.

(i) 19.E.3.29. 18.E.3.59. 30.E.3.18. 11.H.4.84. Pl.Com.525. 21.R.2.deuise. 41.E.3.19. 15.E.3. Counter. Plea de voucher. 47.E. Ass.13.37.H.6.30. 11.E.4.2. 7.H.4.5. 40.E.3.9. 37.H.8. Noime 40. Br.

(k) 15.H.7.14.

(l) 8.E.3.437. 29.E.3.48. 19.E.4.11. 21.E.4.18. 7.H.6.29.

(a) 39. E. 3. 11. 24. Hob. 32. 27. E. 3. 42. 35. Ass. 13. 41. E. 3. 19.

(a) A bastard having gotten a name by reputation may purchase by his reputed or knowne name to him and his heires, although he can have no heire but of his body. A man makes a lease to B. for life, remainder to the eldest issue male of B. & the heires males of his body. B. hath issue a bastard son, he shall not take the remainder, because in law he is not his issue, for qui ex damnato coitu nascuntur inter liberos non computentur. And as Littleton saith; A bastard is quasi nullius filius & can have no name of reputation as soone as he is borne. (b) So it is if a man make a lease for life to B. the remainder to the eldest issue male of B. to be begotten of the body of Iane S. whether the same issue be legitimate or illegitimate. B. hath issue a bastard on the body of Iane S. this son or issue shall not take the remainder, for (as it hath beene said) by the name of issue, if there had beene no other words he could not take, and (as it hath been also said) a Bastard cannot take, but after he hath gained a name by reputation, that he is the sonne of B. &c. (c) And therefore he can take no remainder limited before he be borne, but after he be borne, and that he hath gained by time a reputation to be knowne by the name of a son, then a remainder limited to him by the name of the sonne of his reputed father is good. But if he cannot take the remainder by the name of issue at the time when he is borne he shall never take it. And so it seemeth, and for the same cause, if after the birth of the issue, B. had married Iane S. so as he became Bastard eigne, and had a possibilitie to inherit, yet he shall not take the remainder.

Vid. Sect. 188.

(b) So it was resolued, M. 38. & 39. Eliz. in Brode errore, for land in Porsington in com. Salop. Mo. 430. Lib. 6. 64. a. Fr. Moore Fitzherb. tit.

(c) 39. E. 3. 11. 24. 35. Ass. 13. 41. E. 3. 19. 17. E. 3. 42. 2 Ro: 43. 4 Bro: Grant 14. 8. Mo: 10.

Persons defourmed having humane shape, ideots, mad men, lepers, deafe, dumb, and blinde, minors, and all other reasonable creatures have power to purchase and retaine lands or tenements. (d) But the Common Law doth disable some men to take any estate in some particular things: As if an office either of the grant of the King or Subiect which concernes the administration, proceeding, or execution of Iustice, or the Kings reuenue, or the Commonwealth, or the interest, benefit, or safetie of the subiect, or the like; if these, or any of them be granted to a man that is vnexpert, and hath no skill & science to exercise or execute the same, the grant is meerly void, & the partie disabled by Law, and incapable to take the same, pro commodo regis & populi, for only men of skill, knowledge, and abilitie to exercise the same are capable of the same to serue the king and his people. (e) An infant or minor is not capable of an office of Stewardship of the Court of a Mannor either in possession or reuersion. (f) No man though never so skilfull and expert, is capable of a iudiciall office in reuersion, but must expect vntill it fall in possession. And see Sect. 378. where bargaining or giuing of mony or any manner of reward, &c. for offices there mentioned, shall make such a purchaser incapable thereof, which is worthy to be knowne, but more worthy to be put in due execution.

(d) 5. E. 4. tit. offic. & officer. B. 48. Vintors case. 5. Mar. Dier. fo. 150. Scrogg's case.

(e) M. 40. & 41. Eliz. in the Kings Bench betweene Sir. Scamler and Walters. Cro Ja. 556 153

(f) Lib. 11. fo. 2. in Auditor Curles case. Vid. Sect. 378. 3. H. 7. 31.

Some are capable of certaine things for some speciall purpose, but not to vse or exercise such things themselues. + As the King is capable of an office, not to vse but to grant, &c. + pl. Com. 381

A monster borne within lawfull matrimonie, that hath not humane shape cannot purchase much lesse reteine any thing. (g) The same law is de profestis & mortuis seculo, for they are civiliter mortui, whereof you shall read at large in his proper place, Sect. 200.

(g) Bract. lib. 5. fo. 422. 415. Britt. ca. 22. 39. Fleta lib. 6. ca. 41. 3. E. 3. 9. 44. E. 3. 4. 3. H. 6. 24. 21. R. 2. iudgement 263. 7. H. 4. 2. 14. H. 8. 16. Doct. & Stud. 141. Pl. Com. fo. 47. Britt. c. 33.

¶ *Purchase.* In Latine perquisitum of the verbe perquirere, Littleton describeth it in the end of this Chapter in this manner, Item, purchase est appel le possession de trés ou tenements que home ad per son fait, ou per son agreement, a quel possession il ne avient per title de discent de nul de ses ancesters, ou de ses cosens mes per son fait dem. So as I take it, a purchase is to be taken, when one commeth to lands by conueyance or title, and that disseisons, abatements, intrusions, vsurpations, and such like estates gained by wrong, are not said, in Law purchases, but oppressions and iniuries.

Note that purchasers of lands, tenements, leases, and hereditaments for good and valuable consideration, shall auoid all former fraudulent and coutnous conueyances, estates, grants, charges and limitations of vses, of or out of the same, (h) by a Statute made since Litt. wrote, whereof you may plainly and plentifully read in my Reports, to which I will adde this case, I. C. had a Lease of certaine lands for 60. yeares if he liued so long, and forged a Lease for 90. yeares absolutely, & he by indenture reciting the forged Lease for valuable consideration bargained, and sold the forged Lease: and all his interest in the land to R. G. It seemed to me that R. G. was no purchaser within the statute of 27. Eliz. for he contracted not for the true & lawfull interest, for that was not knowne to him, for then perhaps he would not haue dealt for it, and the visible and knowne tearme was forged, and although by generall words the true interest passed, notwithstanding he gaue no valuable consideration nor contracted for it. And of this opinion were all the Iudges in Serieants Inne in Fleetstreet.

(h) 27. Eliz. ca. 4. 13. Eliz. ca. 5. Dy: 295. Li. 3. fo. 80. 82. 83. Twines Case. Lib. 5. fo. 60. Gooches case, lib. 6. fo. 72. Burrels case, lib. 11. fo. 74. Pasch. 12. Ia. inter Iones pl. and Sir Rich. Groobham def. in ejectione firme in euidence al Iurie. Rep 76. a.

(i) In ancient time when a man made a fraudulent feoffment it was said, quod posuit terram illam in brigam, where brigam doth signifie wrangle, contention, or intricacie, for fraud is the mother of them all. (k) And on the other side, purchases, estates, and contracts may be auoided since Littleton wrote by certaine Acts of Parliament against Vsurie abouetен in the hundred, in such manner and forme as by those Acts is prouided. Which statutes are well expounded in my books of Reports which may be read there. To them that lend money my caueat is, that neither

(i) Hil. 18. E. 3. coram Rege in thesaur.

(k) 37. H. 8. cap. 8. 13. Eliz. ca. 8. lib. 5. fo. 69. Burtons case. eodem lib. fo. 7. Claitons case.

neither directly nor indirectly, by art, or cunning invention; they take about Ten in the hundred, for they that seeke by sleight to creepe out of these Statutes, will deceive themselves, and repent in the end.

¶ *Purchase terres.* Littleton here and in many other places putteth Lands but for an example, for his rule extendeth to ſignories, rents, aduowſons, commons, eſtouers, and other hereditaments of what kinde or nature soever. Lands and other things to be purchased.

¶ *Terre.* Terra, Land in the legall ſignification comprehendeth any ground, soile or earth whatsoever, as meadowes, pastures, woods, moores, waters, marishes, furses and heath, terra est nomen generalissimum, & comprehendit omnes species terræ, but properly terra dicitur à terendo, quia vomere teritur, and anciently it was written with a single r. and in that sense it includeth whatsoever may be plowed, and is all one with arvum ab arando. It legally includeth also all castles, houses, and other buildings: for castles, houses, &c. consist upon two things, viz. land or ground, as the foundation and structure thereupon, so as passing the land or ground, the structure or building thereupon passeth therewith. * Land is anciently called Fleth, but land builded is more worthy than other land, because it is for the habitation of man, & in that respect hath the precedencie to be demanded in the first place in a Præcipe, as hereafter shall be said. And therefore this element of the earth is preferred before the other elements; first & principally, because it is for the habitation and resting place of man, for man cannot rest in any of the other elements, neither in the water, ayre or fire. For as the heavens are the habitation of Almightie God, so the earth hath bee appointed as the suburbs of heaven to be the habitation of man; Cœlum cœli domino, terram autem dedit filiis hominum. All the whole heavens are the Lords, the earth hath he given to the children of men. Besides, every thing as it serveth more immediately or more meerely for the food and vse of man (as shall be said hereafter) hath the precedent dignitie before any other. And this doth the earth, for out of the earth commeth mans food, and bread that strengthens mans heart, Confirmat cor hominis, and wine that gladdeth the heart of man, and Oyle that makes him a cheerefull countenance. And therefore terra olim Ops mater dicta est quia omnia hac opus habeant ad viuendum. And the Diuine agreeth herewith, for hee saith, Patriam tibi & nutricem, & matrem, & mansam, & domum posuit terram Deus, sed & sepulchrum tibi hanc eandem dedit. Also the waters that yeild fish for the food and sustenance of man are not by that name demandable in a Præcipe, but the land whereupon the water flowerth or standeth is demandable (as for example) viginti acr' terræ aqua coopert, and besides the earth doth furnish man with many other necessaries for his vse, as it is replenished with hidden treasures, namely with gold, siluer, brasse, iron, tinne, leade, and other metals, and also with great varietie of precious stones, and many other things for prosit, ornament and pleasure. And lastly, the earth hath in law a great extent vpwards, not only of water as hath beene said, but of ayre and all other things euen vp to heauen, for cuius est solum eius est vsque ad cœlum, as it is holden, 14. H. 8. fo. 11. 21. H. 6. 59. 10 E. 4. 14. Regist. origin. and in other bookes.

* Tr. 7. E. 3. coram Rege Northampt. in thesaur.

Pl. Com. 168. b. & 170. a. & 131. Lib. 4. 87. b. Lutterels case. 4. E. 3. 161. & 6. E. 3. 283. 8. E. 3. 377. Temps E. 1. Bre. 811. 28. H. 8. Dyer 47.

Psal. 115. 16.

Psal. 104. 15.

Chrysost. Hom. 30.

And albeit land, whereof our Author here speaketh, be the most firme and fixed inheritance, & therefore it is called solum, quia est solidum and fee simple the most highest and absolute estate that a man can haue, yet may the same at seuerall times be moueable, sometime in one person, and alternis vicibus in another, nay sometime in one place, and sometime in another. As for example, if there bee 80. acres of meadow which haue beene bled time out of minde of man, to be diuided betweene certaine persons, and that a certaine number of acres appertaine to euerie of these persons, as for example, to A. 13. acres to bee yearely assigned and lotted out, so as sometime the 13. acres lie in one place, and sometime in another, and so of the rest. A. hath a moueable fee simple in 13. acres, and may be parcell of his mannor, albeit they haue no certaine place, but yearely set out in seuerall places, so as the number only is certaine, and the particular acres or place wherein they lye after the yeare incertaine. And soit was adiudged in the Kings Bench vpon an especiall verdict. Vid. Sect. 50. where in this case liuerie shall be made. 48. a

Vide Sect. 548. How these 13. acres may be charged. Post 48. b.

If a partition be made betweene two coparceners of one and the selfe-same land, that the one shall haue the land from Easter vntill Lammas to her & to her heires, and the other shall haue it from Lammas till Easter to her and her heires, or the one shall haue it the first yeare, & the other the second yeare alternis vicibus, &c. there it is one selfe-same land wherein two persons haue seuerall inheritances at seuerall times. So it is if two coparceners haue two seuerall mannors by descent, and they make partition, that the one shall haue the one mannor for a yeare, and the other the other mannor for the same yeare, & after that yeare, then she that had the one mannor shall haue the other, & sic alternis vicibus for euer, and albeit the mannors be seuerall, yet are they certaine, and therefore stronger than Bridgewaters case, so as this doth make a diuision of states of inheritances of lands, viz. Certaine or vnmoueable whereof Littleton here speaketh, and incertaine and moueable, whereof these three cases for examples haue beene put. Wherein it is to bee noted, that the possession is not onely seuerall, but the inheritance also. Hill. 34. Eliz. Rot. 489. 3. Bro: 431. in trns inter Weldon & Mor 302. Bridgewater in Banco Regis Ro: 829. Temps. E. 1. tit. partition 21. F.N.B. 62. I. Vide li. 140. 87. per Walsh. F.N.B. 62. K. Post 167 a. Ro: 829.

Vide 248. 184. where seuerall persons, &c. may be appendant or ingrosse in gros.

(a) 39. E. 3. 11. 24. Hobar. 27. E. 3. 42. 35. Ass. 13. 41. E. 3. 19.

(a) A bastard having gotten a name by reputation may purchase by his reputed or knowne name to him and his heires, although he can have no heire but of his body. A man makes a lease to B. for life, remainder to the eldest issue male of B. & the heires males of his body. B. hath issue a bastard son, he shall not take the remainder, because in law he is not his issue, for qui ex damnato coitu nascuntur inter liberos non computentur. And as Littleton saith; A bastard is quasi nullius filius & can have no name of reputation as soone as he is borne. (b) So it is if a man make a lease for life to B. the remainder to the eldest issue male of B. to be begotten of the body of Iane S. whether the same issue be legitimate or illegitimate. B. hath issue a bastard on the body of Iane S. this son or issue shall not take the remainder, for (as it hath beene said) by the name of issue, if there had beene no other words he could not take, and (as it hath been also said) a Bastard cannot take, but after he hath gained a name by reputation, that he is the sonne of B, &c. (c) And therfore he can take no remainder limited before he be borne, but after he be borne, and that he hath gained by time a reputation to be knowne by the name of a son, then a remainder limited to him by the name of the sonne of his reputed father is good. But if he cannot take the remainder by the name of issue at the time when he is borne he shall never take it. And so it seemeth, and for the same cause, if after the birth of the issue, B. had married Iane S. so as he became Bastard eigne, and had a possibilitie to inherit, yet he shall not take the remainder.

3 Bro: 510.

(b) So it was resolued, M. 38. & 39. Eliz. in Brode errore, for land in Porsington in com. Salop. Mo: 430. Lib: 6. 64. a. For Moore. Fitzherbert cap.

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(d) 5. E. 4. tit. offic. & officer. B. 48. Vintors case. 5. Mar. Dier. fo. 150. Seroggs case.

(e) M. 40. & 41. Eliz. in the Kings Bench betweene Ro. Scamler and Walter. Kelw. 153.

(f) Lib. 11. fo. 2. in Auditor Curles case. Vid. Sect. 378. 3. H. 7. 31.

Dyer 286. pl. 11. 25. + pl. Com. 381.

Domeare capable of certaine things for some speciall purpose, but not to vse or exercise such things themselues. + As the King is capable of an office, not to vse but to grant, &c.

A monster borne within lawfull matrimonie, that hath not humane shape cannot purchase much lesse reteine any thing. (g) The same law is de professis & mortuis seculo, for they are civiliter mortui, whereof you shall read at large in his proper place, Sect. 200.

(g) Bract. lib. 5. fo. 422. 425. Britt. ca. 32. 39. Flet. lib. 6. ca. 41. 3. E. 3. 9. 44. E. 3. 4. 3. H. 6. 24. 21. R. 2. iudgement 263. 7. H. 4. 2. 14. H. 8. 16. Doct. & Stud. 141. Pl. Com. fo. 47. Britt. c. 33.

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(h) 27. Eliz. ca. 4. 13. Eliz. ca. 5. Dy: 295. Li. 3. fo. 80. 82. 83. Twines Case. Lib. 5. fo. 60. Gooches case, lib. 6. fo. 72. Burrels case, lib. 11. fo. 74. Pasch. 12. Ia. inter Ioues pl. and Sir Rich. Groobham def. in ejectione firme in euidence al Iurie.

Ref 76. a.

(i) In ancient time when a man made a fraudulent feoffment it was said, quod posuit terram illam in brigam, where brigam doth signifie wrangle, contention, or intricacie, for fraud is the mother of them all. (k) And on the other side, purchases, estates, and contracts may be auoided since Littleton wrote by certaine Acts of Parliament against Vsurie aboue ten in the hundred, in such manner and forme as by those Acts is prouided. Which statutes are well expounded in my bookes of Reports which may be read there. To them that lend money my caueat is, that neither

(i) Hil. 18. E. 3. coram Rege in thesaur.

(k) 37. H. 8. cap. 6. 13. Eliz. ca. 8. lib. 5. fo. 69. Burtons case. eodem lib. fo. 7. Claitons case.

neither directly nor indirectly, by art, or cunning invention; they take about Ten in the hundred, for they that seeke by sleight to creepe out of these Statutes, will deceiue themselues, and repent in the end.

¶ *Purchase terres.* Littleton here and in many other places putteth Lands but for an example, for his rule extendeth to seignories, rents, aduowsons, commons, estouers, and other hereditaments of what kinde or nature soeuer. Lands and other things to be purchased.

¶ *Terre.* Terra, Land in the legall signification comprehendeth any ground, soile or earth whatsoeuer, as meadowes, pastures, woods, moores, waters, marishes, furses and heath, terra est nomen generalissimum, & comprehendit omnes species terræ, but properly terra dicitur à terendo, quia vomere teritur, and anciently it was written with a single r. and in that sense it includeth whatsoeuer may be plowed, and is all one with arvum ab arando. It legally includeth also all castles, houses, and other buildings: for castles, houses, &c. consist vpon two things, viz. land or ground, as the foundation and structure thereupon, so as passing the land or ground, the structure or building thereupon passeth therewith. * Land is anciently called Fleth, but land builded is more worthy than other land, because it is for the habitation of man, & in that respect hath the precedencie to be demanded in the first place in a Præcipe, as hereafter shall be said. And therefore this element of the earth is preferred before the other elements; first & principally, because it is for the habitation and resting place of man, for man cannot rest in any of the other elements, neither in the water, ayre or fire. For as the heauens are the habitation of Almightie God, so the earth hath hee appointed as the suburbs of heauen to be the habitation of man; Cœlum cœli domino, terram autem dedit filiis hominum. All the whole heauens are the Lords, the earth hath he giuen to the children of men. Besides, euerie thing as it serueth more immediately or more meerely for the food and vse of man (as shall be said hereafter) hath the precedent dignitie before any other. And this doth the earth, for out of the earth commeth mans food, and bread that strengthens mans heart, Confirmat cor hominis, and wine that gladdeth the heart of man, and Oyle that makes him a cheerefull countenance. And therefore terra olim Ops mater dicta est quia omnia hac opus habeant ad viuendum. And the Diuine agreeth herewith, for hee saith, Patriam tibi & nutricem, & matrem, & mensam, & domum posuit terram Deus, sed & sepulchrum tibi hanc eandem dedit. Also the waters that yeild fish for the food and sustenance of man are not by that name demandable in a Præcipe, but the land whereupon the water floweth or standeth is demandable (as for example) viginti acr' terræ aqua coopert, and besides the earth doth furnish man with many other necessaries for his vse, as it is replenished with hidden treasures, namely with gold, siluer, brasse, iron, tinne, leade, and other metals, and also with great variete of precious stones, and many other things for profit, ornament and pleasure. And lastly, the earth hath in law a great extent vpwards, not only of water as hath beene said, but of ayre and all other things euen vp to heauen, for cuius est solum eius est vsque ad cœlum, as it is holden, 14. H. 8. fo. 12. 21. H. 6. 59. 10 E. 4. 14. Regist. origin. and in other bookes.

Pl. Com. 168. b. & 170. a. & 131. Lib. 4. 87. b. Lutterel's case. 4. E. 3. 161. & 6. E. 3. 283. 8. E. 3. 377. Temps E. 1. Bre. 811. 28. H. 8. Dyer 47.

* Tr. 7. E. 3. coram Rege Northampt. in thesaur.

Psal. 115. 16.

Psal. 104. 15.

Chrysost. Hom. 30.

And albeit land, whereof our Author here speaketh, be the most firme and fixed inheritance, & therefore it is called solum, quia est solidum and fee simple the most highest and absolute estate that a man can haue, yet may the same at seuerall times be moueable, sometime in one person, and alternis vicibus in another, nay sometime in one place, and sometime in another. As for example, if there bee 80. acres of meadow which haue beene vsed time out of minde of man, to be diuided betweene certaine persons, and that a certaine number of acres appertaine to euerie of these persons, as for example, to A. 13. acres to bee yearely assigned and layed out, so as sometime the 13. acres lie in one place, and sometime in another, and so of the rest. A. hath a moueable fee simple in 13. acres, and may be parcell of his mannor, albeit they haue no certaine place, but yearly set out in seuerall places, so as the number only is certaine, and the particular acres or place wherein they lye after the yeare incertaine. And lost was adiudged in the Kings Bench vpon an especiall verdict. Vid. Sect. 50. where in this case liuerie shall be made. 48. a.

Vide Sect. 548. How these 13. acres may be charged. Post 48. b.

If a partition be made betweene two coparceners of one and the selfe-same land, that the one shall haue the land from Easter vntill Lammas to her & to her heires, and the other shall haue it from Lammas till Easter to her and her heires, or the one shall haue it the first yeare, & the other the second year alternis vicibus, &c. there it is one selfe-same land wherein two persons haue seuerall inheritances at seuerall times. So it is if two coparceners haue two seuerall mannors by descent, and they make partition, that the one shall haue the one mannor for a yeare, and the other the other mannor for the same yeare, & after that yeare, then she that had the one mannor shall haue the other, & sic alternis vicibus for euer, and albeit the mannors be seuerall, yet are they certaine, and therefore stronger than Bridgewaters case, so as this doth make a diuision of states of inheritances of lands, viz. Certaine or vnmoueable whereof Littleton here speaketh, and incertaine and moueable, whereof these three cases for examples haue beene put. Wherein it is to bee noted, that the possession is not onely seuerall, but the inheritance also.

Hill. 34. Eliz. Rot. 489. 3. Bro: 431. in trin inter Weldon & Mayor. Bridgewater in Banco Regis Ro: 929. Temps. E. 1. tit. partition 21. F. N. B. 62. L. Vide li. 4. 87. per Walsh. F. N. B. 62. K. Post 670. Ro: 929.

Vide Sect. 284. when successions, &c. may be appendant and in gros.

It is also necessarie to be seene by what names lands shall passe. (a) If a man hath 20. acres of land, and by deed granteth to another and his heires, vesturam terræ, & maketh liuery of seisin secundum formam cartæ, the land it selfe shall not passe, because he hath a particular right in the land, for thereby he shall not haue the houses, timber-trees, mines and other reall things parcell of the inheritance, but he shall haue the vesture of the land, (that is) the corne, grasse, vnderwood, swepage, and the like, and he shall haue an action of trespasse, quare clausum fregit. (b) The same law, if a man grant herbagium terræ, he hath a like particular right in the land, and shall haue an action quare clausum fregit, but by grant thereof & liuerie made, the soile shall not passe, as is aforesaid. (c) If a man let to B. the herbage of his woods, and after grant all his lands in the tenure, possession, or occupation of B. the woods shall passe, for B. hath a particular possession and occupation, which is sufficient in this case, & so it was resolued. (d) So if a man be seised of a Riuer, and by deed doe grant separalem piscariam in the same, and maketh liuerie of seisin secundum formam cartæ, the soile doth not passe nor the water, for the Grantor may take water there, and if the riuer become drie, he may take the benefit of the soile, for there passed to the Grantee but a particular right, and the liuerie being made secundum formam Cartæ, cannot enlarge the grant. (e) For the same reason, if a man grant aquam suam, the soile shall not passe, but the pischary within the water passeth therewith. And land couered with water shall be demanded by the name of so many acres aqua cooperti, whereby it appeareth that they are distinct things. (f) So if a man grant to another to dig turues in his land, and to carrie them at his will and pleasure, the land shall not passe, because but part of the profit is giuen, for trees, mines, &c. shall not passe. (g) But if a man seised of lands in fee by his deed granteth to another the profits of those lands, to haue and to hold to him and his heires, and maketh liuerie secundum formam Cartæ, the whole land it selfe doth passe, for what is the land but the profits thereof, for thereby vesture, herbage, trees, mines, and all whatsoeuer parcell of that land doth passe.

(h) By the grant of the Bastlourie of salt, it is said that the soile shall passe, for it is the whole profit of the soile. And this is called Saliua of the French word salure for a salt-pit, and you may read de Salma in Domesday, and Selda, signifieth the same thing: (i) & where you shall read in Records de lacerta in profunditate aquæ salsæ, there lacerta signifieth a fathom. A man seised of diuers acres of wood, grants to another omnes boscos suos, all his woods, not onely the woods growing vpon the land passe, but the land it selfe, and by the same name shall be recouered in a præcipe, for boscus doth not only include the trees, but the land also whereupon they grow.

(k) The same Law if a man in that case grant omnes boscos suos crescentes, &c. yet the land it selfe shall passe, as it hath been adiudged. * Fraxetum signifieth a wood, or ground that is woodie. (l) If a man hath a wood of Elder trees containing 20. acres, and granteth to another 20. acras Alneti (with an N not a V) the wood of Elders, and the soile thereof shall passe, but no other kinde of woods shall passe by that name. Alnetum est vbi alni arbores crescunt. * And sallings are taken for Elders. (m) Salicetū doth signifie a wood of willowes, vbi salices crescunt, these trees in our books are called Sawces. * Selda, is a wood of sallowes, willowes, or withies. A bratue ground is called Filecetum, vbi filices crescunt. A wood of Ashes is called Fraxinetum, vbi fraxini crescunt, and passeth by that name, and Lupulicetum where hops grow, and Arundinetum, where reeds grow. Some say that Dene or Denne, whereof Dena commeth, is properly a valley or dale. Dena syluæ, and the like. (n) as drofden, or drufden, or druden, signifieth a thicket of wood in a valley, for druf or dru, signifieth a thicket of wood, and is often mentioned in Domesday. And sometime Dena or Denna signifieth, as villa and denne, a towne.

(o) Cope signifieth a hill, & so doth Lawe, as Stanlawe is saxeus collis. (p) Howe also signifieth a hill. And hope combe, and Stow are valleyes, and so doth clough. And Dunum or Duna, signifieth a hill or higher ground, and therefore commonly the townes that end in Dun, haue hils or higher grounds in them, which we call Downs. It commeth of the old French word Dun.

(q) In our Latin a wood is called boscus. Grana signifieth a little wood, in old deeds, and Hirst or Hurst a wood, and so doth Holt and Shawe. Twaite signifieth a wood grubbed up, and turned to arable. Stethe or Stede, betokeneth properly a banke of a riuer, and many times a place, as Stowe doth, and Wic, a place vpon the Sea shore, or vpon a Riuer. Ley or Ley signifieth pasture.

(r) If a man doth grant all his pastures, pasturas, the land it selfe imployed to the feeding of beasts doth passe, and also such pastures or feedings, as he hath in another mans soile. Leswes or Leswes is a Saxon word, and signifieth pastures. (s) Between pastura and pascuum, the legall difference is that pastura in one signification containeth the ground it selfe called pasture, and by that name is to be demanded. Pascuum feeding, is where soeuer cattell are fed, of what nature soeuer the ground is, and cannot be demanded in a præcipe by that name.

(t) If a man grant omnia prata sua, all his meadowes, the land it selfe of that kinde passe, & dicitur pratum quasi paratum, because it groweth sponte without manuring. (u) A man grant omnes bruerias suas, the soile where heath doth grow passeth, & may be demanded by that name in

2 Ro: 2 By what names, &c. lands, &c. shall passe.
(a) Vide Sect. 279. 14.H.8.6.4.H.7.13.10.H.7.24. 11.H.7.21. 14.H.7.4.6. 21.H.7.38.37. 9.H.6.52. 37.H.6.35. 22.E.4. barre 116. 11.H.4.90. 18.E.3. Execution 56. 41.E.3.48. 8.E.3.13. 9.Ass.p.12. 38.E.3.24.
(b) Bract. fo. 202. 17.E.3.75. 39.H.6.38. 11. Eliz. Dyer 285.
(c) Patch. 12. Ia. Inter Deckway & Points in euidence at Iury in Banke le Roy.
(d) Vide Sect. 279. Brac. fo. 208. 40.E.3.45. Pl.Com.154. 20.H.7.24. 28.7.H.7.13.
3 Ro: 19 18.H.6.29. 34.H.6.43. 20.H.6.4. 18.E.4.4. 9.E.3.48. 1.E.3.4. 32.E.3. Scir. fac. 100.
Yel: 143. 22.E.4. barre 116. 12.H.3. Ass.427. 34.Ass.11. 13.E.3.tit. Entrie 57.
Ro: 11. 49.b. 20.E.3. Bre.685 W.2.ca.24.
(e) Tr.11.R.2. in trans. nient. imprimee ne abridg. 11.H.7.4.
3 Ro: 190 (f) 7.E.3.342. 5.Ass.9.10. 7.Ass.9.
(g) 45.E.3. tit. feoffments & faits 90. 14.H.8.6. Pl.Com.541.b. F.N.B.fo.8. 12.E.3. Dower 90.
(h) 9.Ass p. 12. 9.E.3.443.466. Domesday.
7.R.1.int. fines in Thesaur.
(i) Int. Inquisit. apud Launcast. anno 6.E.1. in Thesaur. Mich.1.H.5. coram Rege Rot.3. in Thesaur.
Q. P.K. m.6. (k) Tr.7. Eliz. in banco regis lib.5.fol.11. Iues case. 14.H.8.1. 46.E.3.22. 28.H.8. Dyer 19. 32.H.8. Br. reseruat. 39. 7.E.6. Dyer 79.
* Glanuil.lib.8.cap.3.
(l) Domesday Regist. F.N.B.2.
(m) 8.E.2. Wast.111. 7 Ass. 8. 11.Ass.p.13. 41.E.3.Wast.82.
* Hill.14.E.3. coram Rege Lanc in Thesaur.
* Inter inquisit. apud Lanc in com. Cornubie coram Iustic. And. anno 6.E.1. in Thesaur. the B. of Excesters case.
(u) Domesday.
(o) Camden 460.151.
(p) Patch.44.E.3. coram Rege in Thesaur.
(q) Hill.13.E.1. Lanc. coram Rege in Thesaur. Camden Brit 247. Rot.Par.18.E.1.8. Bueque de Carlile case.
(r) Pl.Com.169.a. 4.E.2. Bre 792.793. 3.E.3.80. 4.E.4.1. 27.H.8.12.
(s) 20.Ass.pl.9.
(t) Pl.Com.169.a. 13.E.3. Bre.241. 33.E.3. Entrie 80.
(u) Domesday. F.N.B.2. Regist.
V. 1 Ro: 179.

in a præcipe, it is deriued from bruyer a French word for heath, and it is called Ros in the Brittish tongue.

Roncaria or Runcaria signifieth land full of brambles & briers, and is deriued of Roucier the French word which signifieth the same, & as much as senticetum. (a) By the grant of omnes Iuncarias or joncarias, the soile where rushes do grow, doth passe, for Ionc in French is a Rush, whereof Ioncaria commeth. (b) A man grant omnes Ruscarias suas, the soile where rusci. i. knee holme, or butchers pricks or broome doe grow, shall passe, and so in the verse in the Register it is called, but in F. N. B. fol. 2. in the verse, Pischaria is put in stead of Ruscaria. And Iampna commeth of Lonc and nower, a watersh place, and is all one in effect with Ioncaria. Hee that granteth omnes mariscos suos, all his fennes or marish grounds doe passe. Mariscus is deriued of the French word mares or marets; the Latine word for it, is palus or locus paludosus. Mora is deriued of the English word Moore, and signifieth a more barren and vnprofitable ground than marshes, dangerous for any cattell to goe there, in respect of myre and mossy soyle, neither serues it for getting of turues there: (c) you shall read in Record, that such a man perquisiuit trescent. acr. maretti, &c. this word maretum is deriued of mare the sea, and tego, and properly signifieth a mossy and grauelly ground, which the sea doth couer and ouerflow at a full sea, and lyeth betweene the high water marke, and the low water marke, infra fluxum & refluxum maris. By grant of these particular kindes, the land of these particular kindes onely doe passe, but as hath beene said by the grant of land in generall, all these particular kindes, and some others doe passe. Non mihi si centum linguæ sint oraque centum, Omnia terrarum percurrere nomina possem. And therefore let vs turne our eye to generall words, which doe include lands of seuerall sorts and qualities. (d) By the name of an Honor, which a subiect may haue, diuers mannors and lands may passe. So by the name of an Isle Insula, many mannors, lands and tenements may passe.

Holme or hulmus (signifieth an Isle or fenny ground. *A Commote is a great Seignior, & may include one or diuers mannors; (e) By the name of a castle, one or more mannors may be conueyed, & è conuerso, by the name of a mannor, &c. a castle may passe. In Domesday I read, Comes Alanus habet in suo castellatu 200. maneria, &c. præter castellarium habet 43. maneria, & in that booke a castle is called castellum, and castrum, and domus defensibilis, and mansus muralis. (f) But note by the way, that no subiect can build a castle or house of strength imbattelled, &c. or other fortresse defensible, called in Law by the names aforesaid, and sometimes domus kernellatæ, or Carnellatæ, imbattellatæ, tenellatæ, machecollatæ, mese carnelet, &c. without the licence of the King, for the danger which might ensue, if euerie man at his pleasure might do it. And they be called imbattlements, because they are defences against battels in assaults. Tenellare or tanellare, is to make holes or loopes in walls to shoot out against the Assailants. Machecollare or machecoulare, is to make a warlike deuice ouer a gate or other passage like to a grate through which scalding water, or ponderous, or offensiue things may be cast vpon the assaylants. But to returne to the matter from whence vpon this occasion we are fallen.

By the name of a towne Villa, a mannor may passe. In Domesday, Alodium (in a large sense) signifieth a free mannor, and Alodiarii or Alodarii, Lords of the same, and Lannemanni there signifie lords of a mannor, hauing socam & sacam de tenentibus & hominibus suis. (g) And by the name of a Mannor, diuers townes may passe, quod olim dicebatur fundus nunc manerium dicitur, by the name of a ferme or fearme firma, houses, lands, and tenements may passe, and firma is deriued of the Saxon word feormian, to feed or releeue, for in ancient time they reserued vpon their Leases, cattell & other victuall & prouision for their sustenance. (h) Note a fearme in the North parts is called a Tacke, in Lancashire a Fermeholt, in Essex a Wike. But the word fearme, is the generall word, and anciently fundus signified a fearme and sometime land. (i) Lands making a Knights fee, shall passe by the grant of a Knights fee de vno feodo militis.

(k) Vnum solinum or solinus terræ in Domesday booke containeth two plow Lands & somewhat lesse than an halfe, for there it is said, Septem Solini, or Solina terræ sunt 17. carucat'. Vna hida seu carucata terræ, which is all one as a plow-land, viz. almuch as a plough can till, sullerye also signifieth a plow-land. Vna virgata terræ, a yard-land, the Saxons called it Girdland, and now the G. is turned to a Y. as in some Countries 10. in some 20. in some 24. in some 30. &c. (l) Vna bouata terræ, an oxgange, or an oxgate of land, is as much as an oxe can till. (m) But carucata terræ, and bouata terræ, are words compound, and may containe meadow, pasture, and wood, necessarie for such tillage. Iugum terræ in Domesday, containeth halfe a plow-land. And by all these names in the reigne of R. 1. lands were vsually demanded and long after.

(n) By the name of a Grange, Grangia a house or edifice, not onely where corne is stored vp like as in barnes, but necessarie places for husbandrie also, as stables for hay & horses, and stables and styes for other cattell, and a curtilage, and the close wherein it standeth shall passe, and it is a French word, and signifieth the same, as we take it.

(o) Stagnum, in English a poole, doth consist of water & land, and therefore by the name of Stagnum

(a) Regist. 1. E. 3. 4. F. N. B. 2.

(b) 16. Ass. p. 9. Register.

Iampna.

(c) Pasch. 41. E. 3. coram Rege Lincoln. rot. 28.
(d) Mag. Cart. c. 31. Walingford Notc. Polon. Lanc. &c. Trin. 33. E. 1. coram Rege in Thes. honor de Huntingdon. Mich. 9. E. 1. coram Rege in Thes. 18. E. 2. Ass. 377. 26. Ass. p. 60. 6. E. 3. 56. 47. E. 3. 21. honor de Peuerel. 49. E. 24. honor de Egles. 9. H. 6. 27. 30. H. 8. Dyer 58. honor de Glouc. F. N. B. 265. honor Abbath. de Merle. 5. E. 4. 129. 7. H. 6. 39. 1. E. 3. 4 &c. 13. E. 3. iurisdict. 23. Lib. 4. fo. 88. Lutterels case. 5. H. 7. 9. 14. H. 4. in recordo longo. 8. H. 4. Pl. Com. 168. 8. H. 7. 1. 4. E. 4. 16. *13. E. 3. iurisdict. 23.
(e) 26. Ass. 34. 29. E. 3. 15. 29. H. 6. trauers 14. Bract. fo. 434. 2. E. 3. 4. 5. H. 7. 9. 3. E. 2. Apowry 188. 37. H. 6. 26. 18. H. 6. 11. Lib. rubr. scac. fol. 18.
(f) In veter. Mag. Carta. Cap. escheatrix fol. 162. Britton. cap. 20. Rot. Parliam. 45. E. 3. nu. 34. 6. H. 4. nu. 19. 1. E. 4. cap. 1. Rot. Parliam. 1. E. 3 2. pars. Alano Charleton. 22. E. 3. 2. pars Thoma Barkley &c.
(g) Lamb. expos. verb. ferme. Pl. Com. 195.
(h) Pl. Com. 169. Regist. 227. b. eject. firmæ.
(i) 17 E. 3. fo. 8. 5. E. 3. 213. 16. E. 3. brc. 165. 12. E. 2. bre. 814.
(k) 4. E. 3. 161. 6. E. 3. 283. 2. E. 3. 5. 35. H. 6. 9. Pl. Com. 168. 7. Ass. 18. 11. Ass. 13. Lamb. expos. verb. Hyda & virgat. terræ. Glanuil. lib. cap. Domesday. Bract. lib. 2. cap. 26. 27. & lib. 5. fol. 434. Regist. 72.
(l) 5. E. 3. fine 49. 13. E. 3. fine 67. 39 H. 6. 8. 4. E. 3. 159. 3. E. 3. 377. Bracton fol. 180. 269. 431. 5. H. 3. Dreit. 66. Pl. Com. 168.
(m) 13. E. 3. bre. 241. 2. E. 3. 57. temps E. 1. bre. 811. Pl. Com. 168.
(n) Pl. Com. 169. Linwood. 44 E. 3. 21. 4. E. 1. 32.
(o) 4. E. 3. tit. scossines & faire 79. 14. E. 3. Fornden. 34. 34. Ass. pl. 11.

V. 2. Inst. 31.

V. 2. Inst. 145.

Rg. 160.

(a)13.E.3.4. 4.E.3.143. 8.E.3.351. 10.E.3.482. 13.E.3.entry.57. F.N.B.191.h. Domesday.

Stagnum or a poole, the water and land shall passe also. (a) In the same manner Gurges, a deepe pit of water, a gorge or gulfe consisteth of water and land, and therefore by the grant thereof by that name, the soile doth passe, and a præcipe doth lye thereof, & shall lay his esplees in taking of fishes, as Breames and Roches. In Domesday it is called guort, gort & gors plurally, as for example, de 3. gorz. mille anguillæ.

(b) Hott is of a Forrest, Parke, Chase, vinarye, and warren in a mans owne ground, by the grant of any of them, not onely the priuiledge, but the land it selfe passes, for they are compound. In the booke of Domesday, that is called leuuad and leuga, and leuued, and leuue, which in Latine is called leuca.

(b)Temps E.1.bre.861. 4.H.3.5.10.H.7.30. 44.E.3.12.43.E.3.24. 35.H.6.55.3.H.6.2. Domesday, Bracton lib.4.fo.235. Int.adiudicat.coram Rege. P.39.E.3.lib.2.fo.95.in Thesaur.

(c) Stadium, or ferlingus sive ferlingum, or quarentena terræ, is a furlong of Land, and is as much as to say, a furrow long, which in ancient time was the eight part of a mile, & land will passe by that name. And some hold, that by that name land may be demanded. And de ferlingis & quarentenis, you shall read diuers times in the booke of Domesday, and there you shall read In insula Rex habet vnum frustrum terræ vnde exeunt sex vomeres. Nota frustrum signifieth a parcell, (d) Warectum or wareccum, or varectum, doth signifie fallow; Terra jacet ad Warectum, the land lyeth fallow: but in truth the word is veruactum, quasi vere novo victum seu subactum, terra novalis seu requieta, quia alternis annis requiescat. (e) Tam culta novalia. (f) By the grant of a messuage, or house mesuagium, the orchard, garden and curtilage doe passe, and so an acre or more may passe by the name of a house. It is deriued of the French word mese. (g) In Domesday, a house in a City or Burrough, is called haga; other houses are called there mansiones, mansuræ, & domus, (h) and in an ancient plea concerning Feuersham in Kent, hawes are interpreted to signifie mansiones. In Normans French it is called mesiul or mesuil: Bye signifieth a dwelling, bye an habitation, and byan to dwell.

(c)40.Ass.38.4.H.6,14. 35.E.1.ca.6. Anno 10.R.1.inter fines in Thesaur. Ferlingus terræ continet 32. aeras. Domesday. Frustrum.16.E.3.tit.comon.9. (d)Mich 8.H.3.incipien 9. Coram Rege.Watt.Ro.6. (e)Virg.eglog.1.a. (f)Bract.211.233.22.E.4.trns. 140.Pl.com.168.171. 23.H.8.Br.feoffments 53. 9.Ass.p.21.35.H.6.44. Pl.com.169. (g)Domesday. (h)Pasch.30.E.1.coram Rege Kanc.in Thesaur. Statut.de extent manerij Domesday.

It is to be noted, that in Domesday there be often named bordarij seu borduanni, coscez, coscet, cotucami, cotarij, are all in effect boors or husbandmen, or cotagers, saving that bordarij, which commeth of the French word borde for a cottage, signifieth their boors holding a little house with some land of husbandry bigger than a cottage, and coterelli are meere cotragers, qui cotagia & curtilagia tenent.

Villani in Domesday (often named) are not taken there for bondmen, but had their name de villis, because they had fermes, and there did worke of husbandry for the Lord, and they were euer named before bordarij, &c. and such as are bondmen are called there servi.

(i) Coleberti often also named in Domesday, signifieth Tenants in free socage by free rent, and so it is expounded of record. Radmans and Radchemisters, (Rad, or rede, signifieth firme and stable) there also often named, these are liberi tenentes qui arabant & herciebant ad curiam domini, seu falcabant, aut metebant, because their estates are firme and stable, and they are many times called Sochemans and sokemanni because of their plough seruice.

Domesday (i)Int.placita coram domino Rege Mich.10.E.3.Rot.26. Lamb.expolit.verb.Thanus.

Dreuchs signifieth free tenants of a Manor there also named. Taini or thaini mediocres were freeholders, and sometime called milites regis, and their land called Tainland, and there it is said, hæc terra T R E. fuit Tainland, sed postea conuersa in Reueland. (k) But thainus regis is taken for a Baron, for it is said in an ancient Author, Thainus regis proximus comiti est, & ibidem mediocris thainus, & alibi Baro sive thainus. Berquarium or Bercaria commeth of Berc, an old Saxon word, vsed at this day for barkes or rindes of trees, and signifieth a Tanhouse, or a heath house, where barkes or rindes of trees are laid to tan withall, & Berquarij are mentioned in Domesday. It signifieth also, & more legally a sheepe coat, of the French word Bergerie.

(k)Lib.Rub.cap.15.& cap.41. & 76.W.2.c.46. 7.H.4.38. Lib.dentries tit.Ass. corps.pol-2.

(l) By Vaccaria in Law is signified a Dairy house, deriued of vacca the cow. In Latine it is Lactarium or Lactitium, and vaccarius is mentioned in Domesday. And Fleta maketh also mention of porcaria a swinestye.

(l)7.H.4.38. Fleta lib.2.cap.35. Domesday. 19.R.1.Inter fines.

The content of an Acre is knowne, the name is common to the English, German, and French. In legall Latine it is called Acra, which the Latinists call iugerum. In Domesday it is called Arpen prati, sylvæ, &c. 10.R.1 inter fines, Acra in Cornwall continet 40. perticatas in longitudine & 4. in latitudine & quælibet perticata de 16. pedibus in longitudine.

(m) By the grant of a Selion of land, Selio terræ, a ridge of land, which containeth no certainty, for some be greater and some be lesser, and by the grant de vna porca, a ridge doth passe, Selio is deriued of the French word Sellon for a ridge.

(m)9.E.3.39.Temps.E.1. Br.866.Mich.30.E.1. coram Rege.Gloc.in Thesaur.

(n) By the grant de centum libratis terræ, or 50. libratis terræ, or centum solidatis terræ &c. land of that value passeth, and so of more or lesse, and in ancient time by that name it might haue beene demanded. (o) And many things may passe by a name, that by the same name cannot be demanded by a præcipe (for that doth require more prescript forme) but whatsoeuer may be demanded by a præcipe, may passe by the same name by way of grant.

(n)Bract.fo.377.431.43.E.3.27. Regist.fo.1.94.248.249. F.N.B.fo.87.F.I. (o)Regula. (p)7.R.1.inter fines Sussex.

Frythe is a plaine betweene woods, and so is lawnd or lound, Combe, hope, dene, glyn, hawgh, howgh signifieth a Valley. Howe, hoo, knol, law, peu, and cope a hill. Ey, Ing and worth signifieth a watry place or water. Falesia is a banke or hill by the sea side, it commeth of falaize, which signifieth the same: of all these you shall read in ancient bookes, charters, deeds, and

and records, and to the end that our student should not be discouraged for want of knowledge when he meeteth with them (nescit enim generosa mens ignorantiam pati) we haue armed him with the significatyon of them, to the end he may proceed in his reading with alacrity, and set vpon, and know how to worke into with delight these rough mines of hidden treasure.

(m) By the name of Minera or fodina plumbi, &c the land it selfe shal passe in a grant if liuery be made, and also be recouered in an assise, & sic de similibus.

By the grant of a fouldcourse or the like, lands and tenements may passe. (n) Tenementū, Tenement is a large word to passe, not onely lands and other inheritances which are holden, but also offices, rents, commons, profits apprender out of lands and the like, wherein a man hath any franktenement, and whereof he is seised vt de libero tenemento. But hæreditamentum, hereditament, is the largest word of all in that kinde, for whatsoeuer may be inherited is an hereditament, be it corporeall or incorporeall, reall or personall or mixt.

(o) A man seised of lands in fee hath diuers Charters, deeds & euidences, & maketh a feoffment in fee, either without warrantie, or with warrantie onely against him & his heires, the purchaser shall haue all the Charters, deeds and euidences, as incident to the lands, & ratione terræ, to the end he may the better defend the land himselfe, hauing no warrantie to recouer in value, for the euidences are as it were the sinewes of the land, and the feoffor being not bound to warrantie, hath no vse of them. But if the feoffor be bound to warrantie, so that he is bound to render in value, then is the defence of the title at his perill, and therefore the feoffee in that case shall haue no deeds that comprehend warrantie, whereof the feoffor may take aduantage. Also hee shall haue such Charters as may serue him to deraigne the warrantie paramount; Also he shall haue all deeds and euidences, which are materiall for the maintenance of the title of of the land, but other euidences which concerne the possession, and not the title of the land, the feoffee shall haue them.

(m) 17.E.3.7.43.E.3.33.b. Regist. 65 10.H.7.11. Pl.Com.191.195. Bract.211.336.

(n) 45.E.3.Vouchee 72. Pl: fi: 153.a. 33.E.3.grant.102. 11.H.6.22.27.14.E.4.4. 20.Ass.p.8. 3 E.4 19.11.H.7.25.

(o) Lib.1.fo 1.& 2.in Seignior Buckhursts case 44.E.3.11.b.39.E.3.17.2. 19 H.6.65.b.4 H.6.2. 10 E.4.9.b.18.E.4.14.15. 6.H.7.5.b. H.7.33.a. 2 Ro: 31. mo: 502.

C Auer & tener. These two words doe in this place proue a double signification, viz. auer, to haue an estate of inheritance of lands descendible to his heires, and tener to hold the same of some superior Lord.

There haue beene eight formall or orderly parts of a deed of feoffment, viz. 1. the premisses of the deed implyed by Littleton. 2. the habendum whereof Litl. here speaketh. 3. the tenendum mentioned by Littleton. 4. the Reddendum. 5. the clause of warrantie. 6. the In cuius rei testimonium, comprehending the sealing. 7. The date of the deed containing the day, the moneth, the yeare, and stile of the King, or of the yeare of our Lord. (p) Lastly, the clause of hijs testibus, and yet all these parts were contained in very few and significant words, (q) Hæc fuit candida illius ætatis fides & simplicitas, quæ pauculis lineis omnia fidei firmamenta posuerunt.

Vid. Sect. 40. & 370. 371. many things de cartis & factis Fleta lib. 2. ca. 14. Britton 100. 101. Bracton lib. 5. fo. 396. a. 399. 38. H. 6. 32. 36. Pl. com. Wrotesleys case fol. 96.

(p) Vid. Throgmortons case. Pl. Com.

(q) Lib 6. fo. 43. in sir Anthony Mildmayes case Vid. sect. 378.

The office of the premisses of the deed is twofold. First, rightly to name the feoffor and the feoffee. And secondly to cõprehend the certainty of the lands or tenements to be conueied by the feoffment, either by expresse words, or which may by reference be reduced to a certaintie; for, certum est quod certum reddi potest. The habendum hath also two parts, viz. first, to name againe the feoffee, and secondly to limit the certaintie of the estate. The Tenendum at this day where the fee simple passe, must be of the chiefe lords of the fee. And of the Reddendum more shall be said in his proper place, in the Chapter of Rents. Of the clause of warrantie more shal be said in the chapter of warranties. In Cuius rei testimonium sigillum meum apposui was added, for the Seale is of the essentiall part of the deed. The date of the deed many times Antiquity omitted, and the reason thereof was, for that the limitation of prescription or time of memory did often in processe of time change, and the law was then holden that a deed, bearing date, before the limited time of prescription was not pleadable, and therefore they made their deedes without date, to the end they might alleage them within the time of prescription. And the date of the deedes was commonly added in the reigne of E.1. and E.3. and so euer since.

Brit fo. 10.2.

And sometime Antiquitie added a place, as Datum apud D. which was in disaduantage of the feoffee, for being in generall, hee may alledge the deed to be made where he will. And lastly, Antiquitie did adde, hijs testibus in the continent of the deed after the In cuius rei testimonium, written with the same hand that the deed was, which witnesses were called, the Deed read, and then their names entred. (r) And this is called charter land, and accordingly the Saxons called it Bockland, as it were booke land. Which clause of hijs testibus in subiects deeds continued vntil and in the reigne of H.8. but now is wholly omitted. And it appeareth by the ancient Authors and Authorities of the Law; that before the Statute of 12. E. 2. ca. 2. Process should be awarded against the witnesses named in the deed, testes in carta nominatos, (s) and that the same Statute was but an affirmance of the Common law, which not being well vnderstood, hath caused varietie of opinions in our bookes. But the delay therein was so great, and sometimes (though rarely) by exceptions against those witnesses, which being found true, they were not to be sworne at all, neither to be ioyned to the Jury, nor as witnesses, (t) as if the witnes were infamous, for example, if he be attainted of a false verdict, or of a conspiracie at the

(r) Lamb. expos. verb. terra ex scripto. Vid. Fortescue cap. 32. see the second part of the Institut. cap. 38. 12. E. 2. c. 2. see the second part of the Institutes. Marlbr. cap. 6. & cap. 14.

(s) Brit. fo. 65. 101. 11. E. 3. Proces. 170. 6. H. 3. proces. 209. 8. H. 3. proces. 210. 4. E. 2. gard. 119.

(t) Mirror ca. 4. sect. de infamies & periuries. Glanuil. lib. 2. cap. 15. Bract. lib. 5. fo. 288. 292. Brit. fo. 134. 135. 101. Fleta lib. 3. ca. 21. 8. E. 2. Ass. 396. 2. E. 3. 12. 14. E. 3. 34.

suite

43.E.3.Conſpir.11.
27.Aſs.59.
33.H.6.55.21.H.6.30.
(c)Fortеſcu,cap.26.
Par.55.H.3.in.3.
Stanf.Pl.Cor.174.a.

ſuite of the king, or conuicted of periury, or of a Præmunire, or of forgerie vpon the Statute of 5.Eliz.cap.14. and not vpon the Statute of 1.H.5.cap.3. or conuict of felony, or by iudgement loſt his eares, or ſtood vpon the pillory or tumbrell, or beene ſtigmatices branded, or the like, whereby they become infamous for ſome offences, quæ ſunt minoris culpæ ſunt maioris infamiæ. (c) If a champion in a writ of right become recreant or coward, her thereby loſeth liberam legem, and thereby becomes infamous, and cannot be a witneſſe, for regularly he that loſeth liberam legem, becommeth infamous, and can bee no witneſſe. Or if the witneſſe bee an infidell, or if non ſane memory, or not of diſcretion, or a party intereſſed, or the like. (d) But often-times a man may be challenged to be of a Jury, that cannot be challenged to bee a Witneſſe, and therefore though the Witneſſe be of the neereſt alliance, or kindred, or of counſell, or tenant, or ſeruant to either partie, (or any other exception that maketh him not infamous, or to want vnderſtanding, or diſcretion, or a partie in intereſt) though it be proued true, ſhall not exclude the witneſſe to bee ſworne, (e) but hee ſhall bee ſworne, and his credit vpon the exceptions taken againſt him left to thoſe of the Jury, who are tryers of the fact, inſomuch as ſome Bookes haue ſaid, that though the witneſſe named in the Deed be named a Diſſeiſor in the writ, yet he ſhall be ſworne as a witneſſe to the deed. (f) A Witneſſe amongſt others named in a deed was outlawed, & no Proces was awarded againſt him by the Statute, becauſe he was extra legem, and an outlawed perſon cannot be an Iuditor. And the Court in ſome bookes haue ſaid, that they haue not ſeene witneſſes challenged, which is regularly to be vnderſtood with the limitations aboue-ſaid, but ſuch as are returned to be of a Iurie, are to be challenged for the cauſes aforeſaid for outlawry, and diuers other cauſes (for the which a witneſſe cannot be challenged) and ſuch Proces againſt witneſſes vaniſhed. But ſeeing the witneſſes named in a Deed ſhall be ioyned to the Inqueſt, and ſhall in ſome ſort ioyne alſo in the verdict (in which caſe if Jury and Witneſſes finde the Deed that is denied to bee the Deed of the partie, the aduerſe partie is barred of his attaint, becauſe there is more than 12. that affirme the verdict.) It is reaſon that in that caſe of ioyning, ſuch exception ſhall be taken againſt the Witneſſe as againſt one of the Jury, becauſe he is in the nature of a Iuror. (a) And therefore to put one example, if he be outlawed in a perſonall action hee cannot bee ioyned to the Jury, but yet that is no exception againſt him to exclude him to be ſworne as a witneſſe to the Jury. And the reaſon of all this is, for that if he with others ſhould ioyne in verdict with the Iurie in affirmance of the Deed, the partie ſhould be barred of his Attaint. But note, there muſt be more than one witneſſe, that ſhall bee ioyned to the Inqueſt. And albeit they ioyne with the Jury, and finde it not his Deed, notwithſtanding this ioyning, the partie ſhall haue his attaint, for it is a maxime in law, (b) That Witneſſes cannot teſtifie a negatiue, but an affirmatiue. And if one of the witneſſes named in the Deed bee one of the panell, he ſhall be put out of the panell, and all theſe ſecrets of law doe notably appeare in our bookes.

(4)22 Aſs.12.&41.
23 Aſs.11.
39.E.3.tit.Aſs.409.

(f)34.E.1.Proces.268.

2.Ro.662.
1.Ro:280.

(a)34.E.1.tit.proces 208.
11.Aſs.p.19.20.12.Aſs.p.
3.12.41.18.Aſs.p.11.
22.Aſs.15.23.Aſs.15.
40 Aſs.23.48.Aſs.p.5.
21.H.6.30.

(b)48.E.3.30.12.H 6.ſo.
6.2.50.E.3.16.43.E.3.32.
22.H.4.9.19.E.2.Aſs.408.
Paſch.14.E.3.coram rege
Deuon:in Theſaur.
Fleta lib.6.cap.6.
F.N.B.106.h.& 97.e.

To ſhut vp this point, it is to be knowne, (c) that when a triall is by witneſſes, regularly the affirmatiue ought to be proued by two or three witneſſes, as to proue a ſummons of the tenant, or the challenge of a Iuror, and the like. But when the triall is by verdict of 12. men, there the iudgement is not giuen vpon witneſſes, or other kinde of euidence, but vpon the verdict, and vpon ſuch euidence as is giuen to the Jury they giue their verdict. And Bracton ſaith there is probatio duplex, viz. viua. as by witneſſes viua voce, and mortua, as by deedes, writings, and inſtruments. And many times Juries, together with other matter, are much induced by preſumptions, whereof there be three ſorts, viz. violent, probable, & light or temerary. Violenta præſumptio is manie times plena probatio, as if one be runne thorow the bodie with a ſword in a houſe whereof he inſtantly dieth, and a man is ſeene to come out of that houſe with a bloudy ſword, and no other man was at that time in the houſe. Præſumptio probabilis moueth little, but, Præſumptio leuis ſeu temeraria, moueth not at all. So it is in the caſe of a Charter of feoffment, if all the witneſſes to the Deed be dead (as no man can keepe his witneſſes alive, and time weareth out all men) then violent preſumption which ſtands for a proofe is continuall and quiet poſſeſſion, for ex diuturnitate temporis omnia preſumuntur ſolenniter eſſe acta, alſo the deed may receiue credit, per collationem ſigillorum, ſcripturæ, &c. & ſuper fidem cartarum mortuis teſtibus erit ad patriam de neceſſitate currendum.

(c)Mirror ca.3.
Pl.Com.ſo.10.
Bract.lib.5.ſo.400.

Fleta lib.6.ca.33.
8.E.3.290.39.E.3.21.b.

Glanvil lib.10.ca.12.
Fleta lib.6.ca.33.

2.Ro.686. Paſch,10.Ia.in Com. Banco vpon the Stat.of Bankrouts.

Note, it hath beene reſolued by the Iuſtices, that a wife cannot be produced either againſt or for her husband, quia ſunt duæ animæ in carne vna, and it might be a cauſe of implacable diſcord and diſſention betweene the husband & the wife, and a meane of great inconuenience, but (d) in ſome caſes women are by law wholly excluded to beare teſtimony, as to proue a man to be a Villein, mulieres ad probationem ſtatus hominis admitti non debent. It was alſo agreed by the whole Court (e) that in an Information vpon the ſtatute of vſury, the partie to the vſurious contract ſhall not be admitted to be a witneſſe againſt the Vſurer, for in effect hee ſhould be teſtis in propria cauſa, and ſhould auoyde his owne bonds and aſſurances, and diſcharge himſelfe of the money borrowed, and though he commonly raiſe vp an Informer to exhibit the Information, yet in rei veritate he is the partie. And herewith in effect agreeth Brit-

(d)Fleta.lib.2.ca.44.
43.E.1.tit.Vill.36.37.
2.Ro:685. 19.E.2.Ibid.32.
12.Bo:69. (e)Tr.8.Ia.in com.banco Smithes caſe.
in euidence vpon an information vpon the Statute of Vſury.
Brit.ſo.134.

ton, that he that challengeth a right in the thing in demand, cannot be a witnesse, for that he is a partie in interest. But now let vs returne to that from the which by way of digression (vpon this occasion) we are fallen.

And the ancient Charters of the King which passed away any franchise or reuenue of any estate of inheritance, had euer this clause of his testibus, of the greatest men of the Kingdome, as the Charters of creation of Nobility, yet haue at this day: when his testibus was omitted, and when teste me ipso came in into the Kings grants, you shall read in the second part of the Institutes, Mag. charta, cap. 38. I haue termed the said parts of the Deed, formall or orderly parts, for that they be not of the essence of a Deed of feoffment, for if such a Deed be without præmisses, habendum, tenendum, reddendum clause of warrantie, the clause of In cuius rei testimonium, the Date, and the clause of his testibus, yet the Deed is good. (f) For if a man by Deed giue lands to another, and to his heires without more saying, this is good, if he put his Seale to the Deed, deliuer it, and make liuerie accordingly. (g) So it is if A. giue lands, to haue and to hold, to B. and his heires, this is good, albeit the Feoffee is not named in the premisses. And yet no well aduised man will trust to such Deed, which Law by construction maketh good vt res magis valeat, but when forme and substance concurre, then is the Deed faire and absolutely good. The sealing of Charters and Deeds is much more ancient than some, out of error, haue imagined, for the Charter of the King Edwyn, brother of King Edgar, bearing date Anno Domini, 956, made of the land called Iecklea in the Isle of Ely, was not only sealed with his owne Seale (which appeareth by these words, Ego Edwinus gratia Dei totius Britannicæ telluris Rex meum donum proprio sigillo confirmavi) but also the Bishop of Winchester put to his Seale, Ego Ælfwinus Wintoñ Ecclesiæ diuinus speculator proprium sigillum impressi. And the Charter of King Offa, whereby he gaue the Peter pence, both yet remaine vnder Seale. But no King of England, before, or since the Conquest, sealed with any seale of Armes, before King R. 1. but the Seale was the King sitting in a chaire on the one side of the Seale, and on horse-backe on the other side in diuers formes. And King R. 1. sealed with a Seale of two Lyons, for the Conqueror for England bare two Lyons, and King Iohn in the right of Aquitaine (the Duke where of bare one Lyon) was the first that bare three Lyons, and made his Seale accordingly, and all the Kings since haue followed him. And King E. 3. in anno 13. of his reigne, did quarter the Armes of France with his three Lyons, and tooke vpon him the title of King of France, and all his Successors haue followed him therein.

In ancient Charters of feoffment there was neuer mention made of the deliuery of the deed, or any liuerie of seisin indorsed, for certainly the witnesses named in the deed, were witnesses of both: and witnesses either of deliuerie of the deed, or of liuerie of seisin by expresse tearmes was but of latter times, and the reason was in respect of the notoriety of the feoffment. And I haue knowne some ancient deeds of feoffment hauing liuerie of seisin indorsed suspected, and after detected of forgerie. As if a deed in the stile of the King name him Defensor fidei before 13. H. 8. or Supreame head before 20. H. 8. at what time he was first acknowledged supreme head by the Clergie, albeit the King vsed not the stile of Supreme head in his Charters, &c. till 22. H. 8. or King of Ireland, before 33. H. 8. at which time he assumed the title of the King of Ireland, being before that called Lord of Ireland, it is certainly forged, & sic de similibus.

And some haue obserued that Grace was attributed to King H. 4. Excellent Grace to King H. 6. Maiestie to King H. 8. and before, the King was called, Soueraigne Lord, Liege Lord, Highnesse and Kingly Highnesse, which in Latine in legall proceedings is called Regia Celsitudo, as the beginning of the petition of right to the King is, Humilimè supplicauit vestræ Celsitudini regiæ, &c. and the like. And vpon this occasion it shall not be impertinent, seeing it is part of the formall deed, to set downe the seuerall stiles of the Kings of England since the Conquest.

William the Conqueror commonly stiled himselfe Willielmus Rex, and sometimes Willielmus Rex Anglorum. And the like did William Rufus, and sometimes Willielmus Dei gratia Rex Anglorum.

Henry the first, Henricus Rex Anglorum, and sometimes Henricus Dei gratia Rex Anglorum.

Mawde the sole daughter and heire of H. 1. wrote, Matildis Imperatrix Henrici Regis filia & Anglorum Domina. Diuers of whose creations and grants I haue seene.

King Stephen vsed the stile that King H. 1. did.

Henry the 2. Fitz Emprice omitted Dei gratia, and vsed this stile, Henricus Rex Angliæ, Dux Normanniæ, & Aquitaniæ, & Comes Andegaviæ, hee hauing the Duchy of Aquitaine, and Earledome of Poitiers in the right of Elianor his wife heire to both: And the Earledome of Anjow, Tournie and Maine, as sonne and heire to Ieffery Plantagenet by the said Mawde his wife, daughter and sole heire of King H. 1. She was first married to Henry the Emperour, and after his death to the said Ieffery Plantagenet. Which Duchie of Aquitaine doth include Gascoigne and Guian.

King R. 1. vsed the stile that H. 2. his father did, yet was hee King of Cyprus, and after of Ierusalem, but neuer vsed either of them.

2. Inst. 77. Rb. 8. 19.

(f) Mirror ca. 1. sect. 6. and cap. 5. sect. 1. Glanuil. lib. 10. ca. 12. Pl. 128. contra. Bract lib. 5. fol. 396. Fler. lib. 6. c. 32. Brit. f. 68.

(g) Vid. Tearmes of the Law, verb. Faits. 2. Ro: 867. contra. Vid. Glanuil. lib. 10. c. 12. Mir. c. 1. sect. 3. & c. 3.

21. H. 8. cap. 13.

Vid. 2. H. 4. ca. 15. where Royall Maiesty is attributed to the King, and Crimen læsæ Maiestatis far more ancient.

vid. Spelm. Posthum Gent. of ane Bodr & Chester. fo: 239. 240, 241.

Rex Angliæ, Dom. Hibern. &c. Rep. 7. fol. 22. Col. case.

2. Inst. 1.

King Iohn vsed that stile, but with this addition Dominus Hiberniæ. and yet all that he had in Ireland was conquered by his father King H. 2. which title of Dominus Hiberniæ, he assumed, as annexed to the Crowne, albeit his father, in the 25. yeare of his reigne, had created him King of Ireland in his life time.

King H. 3. stiled himselfe as his father King Iohn did, vntill the 44. yeare of his reigne, and then he left out of his stile Dux Normanniæ, & comes Andegauiæ, and wrote onely Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ.

King E. 1. stiled himselfe in like manner as King H. 3. his father did, Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ. And so did King E. 2. during all his reigne. And King E. 3. vsed the selfe same stile vntill the 13. yeare of his reigne, and then he stiled himselfe in this forme Edwardus Dei gratiæ Rex Angliæ & Franciæ, & Dominus Hiberniæ, leauing out of his stile Dux Aquitaniæ. He was King of France, as sonne and heire of Isabel wife of King E. 2. daughter and heire of Philip le Beau King of France, he first quartered the French Armories with the English in his great Seale, Anno Domini 1338. & regni sui 14.

King R. 2. and King H. 4. vsed the same stile that King E. 3. did. And King H. 5. vntill the 8. yeare of his reigne continued the same stile, and then wrote himselfe, Rex Angliæ hæres & regens Franciæ, & Dominus Hiberniæ, and so continued during his life.

Vid. Roll. Parliam. anno 1. H. 6. nu. 15. he was stiled Rex Franciæ & Angliæ & dominus Hiberniæ.

King H. 6. wrote, Henricus Dei gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ; this King being crowned in Paris King of France vsed the said stile 35. yeares, till he was dispossessed of the Crowne by King E. 4. who after he had reigned also about ten yeares, King H. 6. was restored to the Crowne againe, & then wrote, Henricus Dei gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ ab inchoatione regni sui 49. & recaptionis regiæ potestatis primo.

King E. 4. R. 3. and H. 7. stiled themselues, Rex Angliæ & Franciæ, & Dominus Hiberniæ.

King H. 8. vsed the same stile till the tenth yeare of his reigne, and then he added this word (Octavus) as Henricus octavus Dei gratia, &c. In the 13. yeare of his reigne hee added to his stile Fidei Defensor. In the 22. yeare of his reigne, in the end of his stile he added Supremum caput Ecclesiæ Anglicanæ. And in the 23. yeare of his reigne he stiled himselfe thus, Henricus octavus Dei gratia Angliæ, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. & in terra Ecclesiæ Anglicanæ & Hiberniæ supremum caput.

Rep. 7. fol. 19. Cal. cap. 32.

King E. 6. vsed the same stile, and so did Quæene Mary in the beginning of her reigne, and by that name summoned her first Parliament, but soone after omitted Supremum caput. And after her marriage with King Philip, the stile notwithstanding that omission was the longest that euer was, viz. Philip and Mary by the grace of God King and Queene of England and France, Naples, Ierusalem and Ireland, Defenders of the Faith, Princes of Spaine and Cicilie, Archdukes of Austria, Dukes of Millaine, Burgundy and Brabant, Countees of Hasburgh, Flanders and Tyroll. And this stile continued till the fourth and fifth yeare of King Philip and Quæene Mary, and then Naples was put out, and in place thereof both the Cicilies put in, and so it continued all the life of Quæene Mary.

Rep. 9. fo: 10? they ar shild K. of Engl. Hispaniar. Franc. vtriusq; Sicilie Jerl. & Hiberniæ fidei Defensor &c. & Paleat in vno they ar shild they shild they and Turrio & quarta Regni cap

I need not mention the stile of Quæene Elizabeth, King Iames, nor of our Soueraigne Lord King Charles, because they are so well knowne, and I feare I haue beene too long concerning this point, which certainly is not vnnecessarie to be knowne for many respects. But to shew the causes and reasons of these alterations would aske a Treatise of it selfe, and doth not fort to the end that I haue aimed at. And now let vs returne to the learning of Charters and Deeds of Feoffments and Grants.

Liuerie of seisin incident to a feoffment, Vide sect. 59.

Verie necessarie it is that Witnesses should bee vnderwritten or indorsed, for the better strengthening of Deeds, and their names (if they can write) written with their owne hands. For Liuerie of seisin see hereafter Sect. 59. and for Deeds. Sect. 66. and of conditionall deeds see our Author in his Chapter of Conditions. And now let vs proceed to the other words of our Author.

Mirr. cap. 2. sect. 15. Bract. lib. 2. fol. 62. b. Flet. lib. 6. cap. 1. & 54. & lib. 1. cap. 13. Glanuil. lib. 7. cap. 1. & cap. 12. & 13.

¶ *A luy & a ses heires.* Hæres, in the legall vnderstanding of the Common Law, implyeth that he is ex iustis nuptiis procreatus, for hæres legitimus est quem nuptiæ demonstrant, and is he to whom lands, tenements, or hereditaments by the act of God, and right of blood doe descend of some estate of inheritance, for solus Deus hæredem facere potest non homo: dicuntur autem hæreditas & hæres ab hærendo, quod est arctè insidendo, nam qui hæres est, hæret, vel dicitur ab hærendo quia hæreditas sibi hæret, licet nonnulli hæredem dictum putent, eò quod hæres fuit, hoc est dominus terrarum, &c. quæ ad eum perueniunt.

(a) Bract. lib. 5. fol. 437. 438. Brit. cap. 66. fol. 167. & cap. 83. Fleta lib. 1. cap. 5.

A monster which hath not the shape of mankinde, cannot be heire or inherit any land, albeit it be brought forth within marriage, (a) but although he hath deformitie in any part of his body, yet if he hath humane shape he may be heire. Hii qui contra formam humani generis conuerso more procreantur, vt si mulier monstrosum, vel prodigiosum enixa, inter liberos non computentur, partus tamen cui natura aliquantulum amplauerit vel diminuerit, non tamen superabundanter (vt si sex digitos vel nisi quatuor habuerit) bene debet inter liberos connumerari.

Si

Si inutilia natura reddidit, vt si membra tortuosa habuerit, non tamen is partus monstrosus. Another saith, Ampliatio seu diminutio membrorum non nocet. (b) A Bastard cannot be heire, for (as hath beene said before) qui ex damnato coitu nascuntur inter liberos non computentur. Euerie heire is either a male, or female, or an Hermophradite, that is, both male and female. And an Hermophradite (which is also called Androgynus) shall be heire, either as male or female, according to that kinde of the sex which doth prevaile. Hermophradita, tam masculo, quam fœmininæ comparatur secundum prævalescentiam sexus invalescentis. And accordingly it ought to be baptized. See more of this matter, Sect. 35.

(b) Vid. Sect. 188. 399. Bract. lib. 2. fol. 92. Britt. fo. Fleta li. 1. ca. 5. & l. 6 c. 8. Fleta vbi supra. 3. R. 2. Ro: 625. cmr. cong. 38.

(c) If man seised of lands in fee hath issue an Alien that is borne out of the Kings ligeance, he cannot be heire, propter defectum subiectionis, albeit he be borne within lawfull marriage. If made Denizen by the Kings Letters Patents, yet cannot hee inherit to his father or any other. But otherwise it is if he be naturalized by act of Parliament, for then he is not accounted in Law Alienigena, but Indigena. But after one be made Denizen, the issue that hee hath afterwards shall be heire to him, but no issue that he had before. If an Alien commeth into England and hath issue two sonnes, these two sonnes are Indigenæ subiects borne, because they are borne within the Realme. And yet if one of them purchase lands in Fee, and dieth without issue, his brother shall not be his heire, for there was neuer any inheritable bloud betweene the father and them, and where the sonnes by no possibilitie can be heire to the father, the one of them shall not be heire to the other. See more at large of this matter, Sect. 198.

(c) Mirror ca. 1. Ro. 622. 6. Ca. 3. Sect. ca. 5. Sect. Bract. lib. 5. fol. 415. 427. Britt. fo. 29. Fleta lib. 6. ca. 47. 13. E. 3. br. 677. Ro. 320. 25. E. 3. donatis vltra mare. 31. E. 3. Cosinage. 5. 42. E. 3. 1. 11. H. 4. 26. 14. H. 4. 19. 20. 3. H. 6. 55. 22. H. 6. 38. 9. E. 4. 7. lib. 7. fo. 1. in Calvins case.

If a man be attainted of treason, or felony, although he be borne within wedlocke, hee can be heire to no man, nor any man heire to him propter delictum, for that by his attainder his bloud is corrupted. And this corruption of bloud is so high, as it cannot absolutely be saued, and restored but by Act of Parliament, for albeit the person attainted obtaine his Charter of pardon, yet that doth not make any to bee heire whose bloud was corrupted at the time of the attainder, either downeward or vpward. (d) As if a man hath issue a son before his attainder, and obtaineth his pardon, and after the pardon hath issue another sonne, at the time of the attainder the bloud of the eldest was corrupted, and therefore he cannot bee heire. But if he die liuing his father, the younger sonne shall be heire, for he was not in esse at the time of the attainder, and the pardon restored the bloud as to all issues begotten afterwards. But in that case if the eldest sonne had survived the father, the younger sonne cannot be heire, because hee hath an elder brother which by possibilitie might haue inherited, but if the elder brother had beene an alien, the younger sonne should be heire, for that the alien neuer had any inheritable bloud in him. See more plentifully of this matter, Sect. 646, 647.

1. E. 3. 4. 6 E. 3. 55. Ro. 629. 6. 27. E. 3. 77. 3. E. 2. discent. Br. 64. 31. E. 1. discent. 17. 3 Ro. 238. 46. E. 3. Petition 20. 26. Ass. p. 2. 49. Ass. p'. 4. 29 Ass p. 11. 9. H. 5. 9. (d) Stanf. pl. cor. 195 196. Bracton lib. 3. fo. 132. 133. 176. & lib. 5. fo. 374. Britton fo. 215. b. Fleta lib. 1. ca. 28. Ro. 736.

If a man hath issue two sonnes, and after is attainted of treason, or felony, and one of the sonnes purchase lands and dieth without issue, the other brother shall be his heire, for the attainder of the father corrupteth the lineall bloud only, and not the collaterall bloud betweene the brethren, which was vested in them before the attainder, & each of them by possibilitie might haue beene heire to the father, and so hath it beene adiudged, (*) but otherwise in the case of the alienæ, as hath beene said. (e) But some haue holden that if a man after he be attainted of treason or felony haue issue two sonnes, that the one of them cannot be heire to the other, because they could not be heire to the father, for that they neuer had any inheritable bloud in them.

Mo. 469. 1. Ro. 625.

*In the Exchequer Mic. 40. & 41. Eliz. in le case de Hobby.

(e) Bract. lib. 3 fol. 130. Britton fol. 15. Fleta lib. 1. cap. 58.

(f) One that is borne deafe and dumbe may bee heire to another, albeit it was otherwise holden in ancient time. And so if borne deafe, dumbe, and blinde, for in hoc casu, vitio parcitur naturali, but contract they cannot. Ideots, leapers, mad-men, outlawes in debt, trespasses, or the like, persons excommunicated, men attainted in a præmunire, or conuicted of heresie, may be heires.

(f) Bract. lib. 5 fol. 421. Ro. 626. 430. 434. lib. 2. fol. 12. Fleta lib. 6. ca. 39. 47. 14. H. 3. Bre. 877. 32. E. 3. Age 8. 10. E. 3. 535. 18. E. 3. 33. 13 E. 3. Ley 49.

(g) If a man hath a wife, and dieth, and within a verie short time after the wife marrieth againe, and within nine moneths hath a childe, so as it may be the childe of the one or of the other. Some haue said, That in this case the childe may choose his father, quia in hoc casu filiatio non potest probari, and so is the Booke to be intended, for auoiding of which question and other inconueniences, this was the Law before the Conquest, Sit omnis vidua sine marito duodecim mensibus, & si maritauerit perdat dotem.

(g) 21. E. 3. 39. Panarollus noua rep. Ro. 357. 485. &c. Opus eximium 48. b. Lambard de priscis Anglorum legibus 120. 72. acc.

(h) A man by the Common Law cannot be heire to goods or Chattels, for hæres dicitur ab hæreditate. (i) If a man buy diuers fishes, as Carps, Breames, Tenches, &c. and put them in his Pond, and dyeth, in this case the heire shall haue them, and not the Executors, but they shall goe with the inheritance, because they were at libertie and could not be gotten without industrie, as by nets, and other engines, otherwise it is if they were in a trunke or the like. Likewise Deere in a Parke, Conies in a Warren, and Doues in a Doue house, young and old shall goe to the heire. (k) But of ancient time the heire was permitted to haue an action of debt vpon a bond made to his Ancestor and his heires, but the Law is not so holden at this day. Vid. Sect. 12.

(h) Bract. lib. 4. ca. 9. fol. 265. lib. 2. fo. 62. b. Fleta lib. 6. ca. 1. Lib. 8. fo. 54. Syms case.

(i) Mich. 36. & 37. El. Rot. 25. Inter Gray and Paulet in the Kings Bench. Stanford 25. b. 18. E. 4. 8. 22. Ass 25. 18. H. 8. 2.

(k) 13. E. 3. det. 135. 139. 140. 47. E 3. 23. 25. E. 3. fol. 48. 26. E. 3. fo. Vid. for an heireloome. hæreditarium or principalius, Sect. 12.

(l) It is to be noted that one cannot be heire till after the death of his Ancestor, he is called hæres apparens heire apparent.

(l) Mirror ca. 1. Sect. 3.

In our old bookes and recoꝛds there is mention made of another heire, viz. hæres aſtrarius, ſo called of Aſtre, that is, an harth of a houſe, becauſe the aunceſter by conueyance hath ſet his heire apparent, and his family in a houſe and liuing in his life time, of whom Bracton ſaith thus, (a) Item eſto quod hæres ſit aſtrarius, vel quod aliquis anteceſſor reſtituat hæredi in vita ſua hæreditatem, & ſe dimiſerit, videtur quod nullo tempore jacebit hæreditas. & ideo quod nec releuari poſſit, nec debet, nec releuium dari. (b) For the benefit and ſafetie of right heires contra partus ſuppoſitos, the Law hath prouided remedie by the Writ De ventre inſpiciendo, wheres of the rule in the Regiſter is this; Nota ſi quis habens hæreditatem duxerit aliquam in vxorem & poſtea moriatur ille ſine hærede de corpore ſuo exeunte, per quod hæreditas illa fratri ipſius defuncti deſcendere debeat, & vxor dicit ſe eſſe prægnantem de ipſo defuncto cum non ſit, habeat frater, & hæres breue de ventre inſpiciendo. It ſeemeth by Bracton and Fleta which followed him, that this Writ doth lye, Vbi vxor alicuius in vita viri ſui ſe prægnantem fecit cum non ſit, vel poſt mortem viri ſui ſe prægnantem fecit cum non ſit ad exhæredationem veri hæredis, &c. ad quærelam veri hæredis per præceptum domini regis, &c. which is to be vnderſtood according to the rule of the Regiſter: when a man hauing lands in Fee ſimple dieth, and his wife ſoone after marrieth againe, and faines her ſelfe with childe by her former husband, in this caſe though ſhe be married, the Writ De ventre inſpiciendo doth lye for the heire. But if a man ſeiſed of lands in fee (for example) hath iſſue a daughter, who is heire apparant, ſhe in the life of her father cannot haue this Writ for diuers cauſes; firſt, becauſe ſhe is not heire, but heire apparant, for as hath beene ſaid, nemo eſt hæres viuentis, and this Writ is giuen to the heire to whom the land is deſcended. And both Bracton and Fleta ſaith, that this Writ lieth Ad quærelam veri hæredis, which cannot be in the life of his Anceſtor, and herewith agreeth Britton and the Regiſter. Secondly, the taking of a husband in the caſe aforeſaid being her owne act, cannot barre the heire of his lawfull action once veſted in him. Thirdly, the Law doth not giue the heire apparant any Writ, for it is not certaine whether he ſhall be heire, ſolus Deus facit hæredes. Fourthly, the inconuenience were too great if heires apparant in the life of their Anceſtor ſhould haue ſuch a Writ to examine and trie a mans lawfull wife in ſuch ſort as the Writ De ventre inſpiciendo doth appoint, and if ſhe ſhould be found to be with childe, or ſuſpect, then ſhe muſt be remoued to a Caſtle and there ſafely kept vntill her deliuerie, and ſo any mans wife might be taken from him againſt the Lawes of God and man.

(a) Bract. lib. 2. fo. 85. Heref. p. 8. E. 1. Ro. 80. de Banco. Mirror cap. 2. ſect. 18. Britton 151. b.

(b) Regiſtr. fo. 227. Bracton lib. 2. fo. 69. Britton fol. 165. Fleta lib. 1. ca. 14.

2 Bro: 686.

Britton fo. 165. b. Regiſt. vbi ſupra.

Vid. Bracton, Britton & Fleta vbi ſupra. Regiſtr. vbi ſupra. Bracton and Fleta vbi ſupra haue (ad exhæredationem.)

The words of the Writ De ventre inſpiciendo make this euident, Rex vic. ſalutem, monſtrauit nobis A. quod cum R. *quæ fuit vxor Clementis* B. prægnans non ſit, ipſa falsò dicit ſe eſſe prægnantem de eodem Clemente, *ad exhæredationem* ipſius A. deſicut terra quæ fuit eiuſdem C. *ad ipſum A. jure hereditario deſcendere debeat* tanquam *ad fratrem & hæredem* ipſius C. ſi prædict. R. prolem de eo non habuerit, &c. But this rather belongs to the Treatiſe of originall Writs, and therefore thus much herein ſhall ſuffice.

V.P.R: 181.

And it is to be obſerued that euerie word of Littl. is worthy of obſeruation, firſt (Heires) in the plurall number, for if a man giue land to a man and to his heire in the ſingular number, he hath but an eſtate for life, for his heire cannot take a fee ſimple by deſcent, becauſe he is but one, and therefore in that caſe his heire ſhall take nothing. Alſo obſeruable is this coniunctiue (Et), For if a man giue lands to one, To haue and to hold to him or his heires, he hath but an eſtate for life for the vncertaintie. (Ses, ſuis) If a man giue land vnto two, To haue and to hold to them two & hæredibus (c) omitting ſuis, they haue but an eſtate for life for the vncertaintie, whereof more hereafter in this Section. But it is ſaid, if land be giuen to one man, & hæredibus, omitting ſuis, that notwithſtanding a Fee ſimple paſſeth, but it is ſafe to follow Littleton.

Lib. 6. 45) 10. H. 6. 7. 22. H. 6. 13. 121. a. Pl. Com. 28. b. 22. E. 4. 16. 2. H. 4. 13. 20. E. 3. br. 377.

(d) Lib. 5. fo. 96. 97. Britt. fo. 28. H. 8. Dyer. Cont. 832. Pl. Com. 287. 288. 28. b.

(c) Bract. lib. 2. ca. 39. fo. 92. b. Br. ca. 39. fo. 99. b. Fleta lib. 6. ca. 1. 2. & lib. 3. cap. 2. 20. H. 6. 35. 36. 19. H. 6. 17. 22. 74. 22. E. 4. 16. b. 4. E. 6. Pl. Com. 26.

Ibid. 833.

¶ (d) *Et ſes aſſignes.* Aſſignee commeth of the verbe aſſigno. And note there be aſſignes in Deed, and aſſignes in Law, whereof ſee more in the chapter of Warrantie, Sect. 733.

(f) Vid. ſect. 413.

(g) 7. E. 3. 25. Vid. ſect. 686. 25. E. 3. 3. 5. Bract. lib. 2. fol. 62. b. Vid. ſect. 413.

¶ *Ceux parolx (ſes heires) tant ſolement font leſtate denheritance en touts feoffments & grants.* (e) Si autem facta eſſet donatio, vt ſi dicam, do tibi talem terrã, iſta donatio non extendit ad hæredes ſed ad vitam donatoris, &c. (f) Here Littleton treateth of purchaſes by naturall perſons, and not of bodies politique or corporate; (g) for if lands be giuen to a ſole bodie politique or corporate, (as to a Biſhop, Parſon, Vicar, Maſter of an Hoſpitall, &c.) there to giue him an eſtate of inheritance in his politique or corporate capacity, he muſt haue theſe words, To haue and to hold to him and his ſucceſſors, for without theſe words Succeſſors, in thoſe caſes there paſſeth no inheritance, for as the heire doth inherit to the Anceſtor, ſo the ſucceſſor doth ſucceed to the predeceſſor, and the executor to the teſtator. (h) But it appeareth here by Littleton, that if a man at this day giue lands to I. S. & his ſucceſſors, this createth no fee ſimple in him, for Littleton ſpeaking of naturall perſons ſaith that theſe words (his heires) make an eſtate of inheritance in all Feoffments & Grants, whereby he excludeth theſe words (his ſucceſſors.) (i) And yet if it bee an ancient grant it muſt bee expounded as the Law was taken at the time of the grant. (k) A Chantrie Prieſt incorporate tooke a Leaſe to him

(e) Si autem facta eſſet donatio, vt ſi dicam, do tibi talem terrã, iſta donatio non extendit ad hæredes ſed ad vitam donatoris, &c.

(h) Pl. Com. 242. Seignior Berkleyes caſe.

(i) Vid. Brit. fo. 86. 121. & 130. 17. E. 3. 25. b. 33. H. 6. 22. 10. H. 7. 13. 14 9. H. 7. 11. 16. H. 7. 9. 15. E. 4. 13. 14. H. 6. 12. 35. H. 6. 54. 24. Aſſ. 14. 40. Aſſ. 21. Tr. 5. E. 3. Rot. 4. in Scaccario. 3. E. 3. 32. 7. E. 3. 40 11. H. 4. 84. 12. H. 4. 12. 18. E. 3. Comſans 39. b. 9. E. 4. 121. 38. E. 3. 4. Lib. 9. fo. 28. in Caſe de Abb. de Strata Marcella.

3 Bro. 633. 2. Lut. 25.

him and his successors for a hundred yeares, and after tooke a release from the Lessor to him and his successors, and it was adiudged that by the release he had but an estate for life, for he had the Lease in his naturall capacitie for it could not goe in succession, and (his successors) gaue him no estate of inheritance for want of these words (his heires) (l) If the King by his Letters Patents giueth lands Decano & Capitulo, habendum sibi & hæredibus & successoribus suis, In this case albeit they be persons in their naturall capacitie to them and their heires, yet because the Grant is made to them in their politique capacitie, it shall enure to them and their successors. And so if the King doe grant lands to I. S. Habendum sibi & successoribus siue hæredibus suis, this grant shall enure to him and his heires.

(k) Hil. 21. Eliz. Dyers manuscript, Inter Ansley & Iohnson in Com. Banco. v. post 46. b.

(l) 18. H. 6. 11. b. &c. adiudge.

(m) B. hauing diuers sonnes and daughters, A. giueth lands to B. & Liberis suis, & a lour heires, the father and all his children doe take a Fee simple joyntly by force of these words (their heires) but if hee had no childe at the time of the feoffment, the childe borne afterward shall not take.

(m) 15 E. 3. tit. Counterplea de Voucher. 43. 37. H. 6. 30. 11. E. 4. 2.

These words (his heires) doe not onely extend to his immediate heires, but to his heires remote, and most remote, borne and to be borne, (n) Sub quibus vocabulis (hæredibus suis) omnes hæredes propinqui comprehenduntur, & remoti, nati, & nascituri. And hæredum appellatione veniunt hæredes hæredum in infinitum. And the reason wherefore the Law is so precise to prescribe certaine words to create an estate of inheritance, is for auoyding of vncertainty, the mother of contention and confusion.

(n) Fleta lib. 3. cap. 8.

Pl. Com. 163.

There be many words so appropriated, as that they cannot be legally expressed by any other word, or by any periphrasis, or circumlocution: Some to estates of lands, &c. as here and in (a) other places of our Author. In this place these words tantsolement, not solement alone, but tantsolement all onely, i. solummodo, or duntaxat, are to be obserued; (b) Some to tenures; (c) Some to persons; (d) Some to offences; (e) Some to formes of originall Writs either for recouerie of right, or remouing, or redresse of wrong, (f) Some to warrantie of land. These haue I touched for examples, I leaue others to the studious reader to obserue, and adde, holding this for an vndoubted veritie, that there is no knowledge, case, or point in Law, seeme it of neuer so little account, but will stand our Student in stead at one time or other, and therefore in reading, nothing to be pretermitted.

(a) Sect. 17. & c. 133.
(b) Sect. 156. 161.
(c) Sect. 184.
(d) Sect. 190. 194. 746.
(e) Sect. 7. 67. 194. 204. 234. 236. 241. 405 485. 478. 651. 655. 646. 620. 614. 637. 674. 692.
(f) Sect. 733.

¶ *Font lestate.* Status dicitur à stando, because it is fixed and permanent. The Isle of Man, which is no part of the Kingdome, but a distinct territorie of it selfe, hath beene granted by the great Seale to diuers subiects and their heires. (g) It was resolued by the Lord Chancellor, the two chiefe Iustices and chiefe Baron, that the same is an estate descendible according to the course of the Common Law, for whatsoeuer state of inheritance passe vnder the great Seale of England, it shall be descendible according to the rules, and course of the Common Law of England.

(g) Tr. 40 Eli. in le Countee de Derbyes case, by the Lo. Chancellor, les 2. chiefe Iustices, & chiefe Baron. 7 Rep. 284.

¶ *En touts feoffments & grants.* Here hee giueth the feoffment the first place, as the ancient and the most necessarie conueyance, both for that it is solemne and publike, and therefore best remembred and proued, (g) and also for that it cleareth all disseisins, abatements, intrusions, and other wrongfull or defeasible estates, where the entrie of the feoffor is lawfull, which neither fine, recouerie, nor bargaine and sale by Deed indented and inrolled doth. And here is implyed a diuision of fee, or inheritance, viz. (h) into corporeall (as Lands and Tenements which lye in liuerie) comprehended in this word Feoffment, and may passe by liuerie by Deed, or without Deed, which of some is called hæreditas corporata, and incorporeall, (which lye in grant, and cannot passe by Liuerie, but by Deed, (as Aduowsons, Commons, &c, and of some is called hæreditas incorporata) and, by the deliuerie of the Deed, the freehold, and inheritance of such inheritance, as doe lye in grant, doth passe) comprehended in this word Grant. And the Deed of incorporeate inheritances doth equall the liuerie of corporeate. And therefore Littleton saith, in all Feoffments and Grants. Hereditas, alia corporalis, alia incorporalis: Corporalis est, quæ tangi potest & videri, incorporalis quæ tangi non potest, nec videri.

(g) Vide Sect 59. & 66.

(h) Mirror c. 2. Sect. 15. & c. 5. Sect. 1. Bract. lib. 2. fo. 53. 366. 368. Fleta lib. 3. ca. 1. 2. 15. Britt. 84. 87. a. & fol. 63. 101. 102. 141. 142. agreeth herewith. Pl. Com. 171. Hill. & Grange.

Mirror cap. 5. Sect. 1. Britton cap. 34.

Feoffment is deriued of the word of art Feodum, quia est donatio feodi, for the ancient writers of the Law called a feoffment donatio, of the verbe do or dedi, which is the aptest word of feoffment. And that word Ephron vsed, * when he enfeoffed Abraham, saying, I giue thee the field of Machpelah ouer against Mamre, and the Caue therein I giue thee, and all the trees in the field and the borders round about, all which were made sure vnto Abraham for a possession, in the presence of many witnesses.

For the Antiquitie of Feoffments see the second part of the Institutes, Merlebridge ca. 9. 8. E. 3. 24. 18. H. 6. 24. 39. H. 6. 39.
* Genesis 23.

By a feoffment the corporeate fee is conueyed, & it properly betokeneth a conueyance in fee, as our author himselfe hereafter saith, * in his chapter of Tenant for life. And yet sometime improperly it is called a feoffment when an estate of freehold onely doth passe, Done est nosme generall plus que nest feeffment, car done est generall a touts choses moebles & nient moebles, feoffment est riens forsque del soyle. And note there is a difference inter cartam & factum, for carta

* Vide Sect. 57. 2 Ins: 110. Britton cap. 34. 44. E. 3. 41. See more of feoffments Sect. 60. See of factum, Sect. 259.

carta is intended a Charter which doth touch inheritance, and so is not factum vnlesse it hath some other addition.

Lib. 3. f. 63. in Lincolne Colleges case.

Grant, Concessio, is properly of things incorporeall, which (as hath been said) cannot passe without Deed. And here it is to be obserued (that I may speake once for all) that euerie period of our Author in all his three bookes containes matter of excellent learning, necessarily to be collected by implication, or consequence, for example he saith here, that these words (his heires) make an estate of inheritance in all feoffments and grants, he expressing feoffments & grants, necessarily implyeth, that this rule extendeth not, first, to Lasts Wills and Testaments, for thereby, (i) as he himselfe after saith, an estate of inheritance may passe without these words (his heires) (k) As if a man deuise 20. acres to another, and that hee shall pay to his executors for the same ten pound, and hereby the deuisee hath a fee simple by the intent of the deuisor, albeit it be not to the value of the land. (l) So it is if a man deuise lands to a man imperpetuum, or to giue, and to sell, or in feodo simplici, or to him & to his Assignes for euer. In these cases a fee simple doth passe by the intent of the Deuisor, but if the deuise be to a man and his Assignes without saying (for euer) the Deuisee hath but an estate for life. (m) If a man deuise land to one & sanguini suo, that is a Fee simple, but if it be Semini suo, it is an estate taile.

Hob. 65. Roll. 834. 1 Bro. 129. 3 Bro. 330. V. Ry. 169. Mr. Peck.

(i) Litt. lib. 3. c. de Attorn. Sect. 5. 8. 6. 4. E. 6. Estates Br. 78. 29. H. 8. Testaments 18. 22. Eliz. Dier 371. Temps H. 8. tit. Conscience. Br. 21.
(k) 21. E. 3. 16. 34. H. 6. 7. 19. H. 8. 9. lib. 3. fo. 21. in Borastons case lib. 6. f. 16. 17. lib. 10. fol. 67. Mo. 362.
(l) Vide Sect. 585.
(m) Mich. 40. & 41. Eliz. in Error. Inc. Downhall & Catesby adiudge. Brooke tit. taile 21.

(n) Secondly, that it extendeth not to a Fine sur conusans de droit come ceo que il ad de son done, by which a fee also may passe without this word (heires) in respect of the height of that fine, and that thereby is implyed that there was a precedent gift in fee.

(n) Lib. 1. fo. 100. Shellyes case 42. E. 3. 7. 19. H. 6. 17. b. 22. b. Pl. com. 248.

Thirdly, nor to certein Releases, and that three manner of waies, (o) first when an estate of inheritance passeth & continueth, as if there be three coparceners or ioyntenants, & one of them release to the other two, or to one of them generally without this word (heires) by Littletons owne opinion they haue a fee simple as appeareth hereafter. 2. By release (p) when an estate of inheritance passeth & continueth not, but is extinguished, as where the Lord releases to the tenant, or the Grantee of a rent, &c. release to the tenant of the land generally all his right, &c. hereby the Seigniorie, rent, &c. are extinguished for euer, without these words (heires.) 3. (q) When a bare right is released, as when the disseisee release to the disseisor all his right, he need not (saith our Author in another place) speake of his heires. But of all these, & the like cases, more shall be treated in their proper places. 4. Nor to a Recouerie, A. seised of land sufferes B. to recouer the land against him by a common recouerie where the iudgment is quod prædictus B. recuparet versus præd'. A. tenementa prædicta cum pertin, yet B. recouereth a fee simple without these words (heires) for regularly euerie recoueror recouereth a fee simple. 5. Nor to a creation of Nobilitie by Writ, for when a man is called to the vpper house of Parliament by Writ, he is a Baron and hath inheritance therein without the word (heires) yet may the King limit the generall state of inheritance created by the Law and custome of the Realme to the heires males, or generall, of his body by the Writ, as he did to Bromflete who in 27. H. 6. was called to Parliament by the name of the Lo: Vescye, &c. With the limitation in the Writ to him & the heires males of his bodie, but if he be created by patent, he must of necessitie haue these words (his heires) or the heires males of his bodie, or the heires of his bodie, &c. otherwise he hath no inheritance. The first creation of a Baron by patent that I finde was of Iohn Beauchampe of Holte created Baron by patent in 11. R. 2. for Barons before that time were called by Writ. And it is to be obserued that of ancient times Earles, &c. were created by girding them with a sword, & nominating him Earle, &c. of such a Countie or place, & this with a calling of him to Parliament by Writ, by that name was a sufficient creation of inheritance.

(o) Litt. lib. 2. ca. tenant in common. Sect. 304, 305. cap. Attorn. Sect. 374. Dier 9. Eliz. 263.
(p) Litt. lib. 3. c. Releases. Sect. 479. 480. 20. H. 6. 17. 19. H. 6. 17. 23
(q) Litt. cap. Releases. Sect. 467.

27. H. 6. Lo. Vescies case.

But out of this rule of our Author, the Law doth make diuers exceptions (Et exceptio probat regulam) for sometime by a Feoffment a Fee simple shall passe without these words (his heires.) For example, first, (r) if the father infeoffe the son, To haue and to hold to him and to his heires, and the son infeoffeth the father as fully as the father infeoffed him, by this the father hath a fee simple, quia verba relata hoc maximè operantur per referentiam vt in esse videntur. (s) Secondly, in respect of the consideration, a Fee simple had passed at the Common Law without this word (heires) and at this day an estate of inheritance in taile, as if a man had giuen land to a man with his Daughter in Frankmarriage generally, a Fee simple had passed without this word (heires) for there is no consideration so much respected in Law, as the consideration of marriage, in respect of alliance and posteritie. (t) Thirdly, if a Feoffment or Grant be made by Deed to a Mayor and Communaltie or any other Corporation aggregate of many persons capable, they haue a Fee simple without the word (Successors) because in iudgement of the Law they neuer die. (u) Fourthly, in case of a sole Corporation a fee simple shal sometime passe without this word (successors) as if a feoffment in fee be made of land to a Bishop, To haue and to hold to him in libera eleemosyna, a Fee simple doth passe without this word (Successors.) (w) And so if a man giue lands to the King by Deed inrolled, a Fee simple doth passe without these words (successors or heires) because in iudgement of Law the King neuer dieth. Fiftly, in Grants sometimes an Inheritance shall passe without this word (heires)

Pl. 28. Pl. 94. b.

(r) 39. Ass. 12. 41. E. 3. tit. Feoffments & faits 254. 14. H. 4. 13. 34. E. 3. Auowry 258.
(s) Vide Sect. 17. 22. H. 4. 19. in Pomedon.

(t) 8. E. 3. 27. 11. H. 7. 12. 22. E. 4. 11. H. 4. 84. 2. H. 4. 13.
(u) 19. H. 6. 74. 20. H. 6. 36.

(w) Pl. Com. Lo. Berkleyes case.

(heires) (x) as if partition be made betweene coparceners of lands in fee simple, & for oweltie of partition the one grant a rent to the other generally, the grantee shall haue a fee simple without this word (heires) because the grantor hath a fee simple in consideration wherof he granted the rent, ipsæ etenim leges cupiunt vt jure regantur. Sixtly, by the Forrest Law if an Assart be granted by the King at a Justice seat (which may be done without Charter) to another Habendum & tenendum sibi imperpetuum, he hath a fee simple without this word (heires) (y) for there is a speciall law of the Forrest, as there is a Law Marshall for warre, & a Marine Law for the seas. (z) And this rule of our Author extendeth to the passing of estates of inheritances in exchanges, releases, or confirmations that enure by way of enlargement of estates, warranties, bargaine and sales by Deed indented & inrolled & the like, in which this word (heires) is also necessarie, for they doe tant amount to a feoffment or grant, or stand vpon the same reason that a feoffment or grant doth, for like reason doth make like law, vbi eadem ratio, ibi idem jus. And this is to be obserued throwout all these three bookes, that where other cases fall within the same reason, our Author doth put his case but for example, for so our Author himselfe in another place * explaneth it, saying, Et memorandum que en tours auters cases coment que ne sont icy expressiment mises & specifies si sont en semblable reason sont en semblable ley. And here our Author is to be vnderstood to speake of heires when they are inheritable by discent, for they are capable of land also by purchase, and then the course of descent is sometime altered, as if lands of the nature of Gauelkind be giuen to B. and his heires hauing issue diuers sons, all his sons after his decease shall inherit, but if a lease for life be made, the remainder to the right heires of B. and B. dieth, his eldest son only shall inherit, for he only to take by purchase is right heire by the Common Law. So note a diuersitie betweene a purchase & a descent, but where the remainder is limited to the right heires of B. it need not to be said, and to their heires, for being plurally limited it includeth a Fee simple, and yet it resteth but in one by purchase.

(x) 29.Ass.23. 15.H.7.14. 2.H.7.5. 11.H.4.3. 21.E.3.1, 21.Ass.

(y) 40.H.7.7.

(z) 22.E.3.3. 45.E.3.20. 9.E.3.21. Li.4 f.121. Bustards case. Vide sect. 465. 469. 610. 19.H.6.17. 22. 19.E.2.garr.85.

* Sect. 301.

V. Dy. 133. b. 179. 45.

Out of that which hath beene said it is to be obserued, that a man may purchase lands to him and his heires by ten manner of conueyances, (for I speak not here of Estoppels.) First, by Feoffment: Secondly, by Grant (of which two our Author here speaketh.) Thirdly, by Fine, which is a feoffment of record. Fourthly, by common Recouerie, which is a common conueyance, and is in nature of a feoffment of record. Fifthly, by Exchange, which is in nature of a Grant. Sixthly, by release to a particular tenant. Seuenthly by Confirmation to a particular tenant, both which are in nature of Grants. Eightly, by Grant of a reuersion or remainder with attornment of the particular tenant, of all which our Author speaketh hereafter. Ninthly, by bargaine and sale by Deed indented and inrolled ordained by Statute since Littleton wrote. Tenthly, by deuise by custome of some particular place, as he sheweth hereafter, and since he wrote, by Will in writing, generally by authoritie of Parliament.

27.H.8.ca.16. 32.H.8.ca.2. 34.H.8.ca.5.

What words are apt words for a feoffment or grant Vide Sect. 531. Our Author speaketh of Feoffments and Grants, whereby is implyed lawfull conueyances, and therefore this rule extendeth not to Disseisins, Abatements, or Intrusions into lands or tenements, or to vsurpations to Aduowsons, &c. in which cases estates in Fee simple are gained by the act and wrong of the disseisors, abators, intruders and vsurpers, and if a disseisin, abatement, or intrusion be made to the vse of another, if cey que vse agreeth thereunto in pays, by this bare agreement he gaineth a Fee simple without any liuerie of seisin or other ceremony.

Sect. 531. 37.Ass.p.8. 38.Ass.p.9. 12.E.4.9. &c.

Sect. 2.

CEt si home purchase terres en Fée simple & deuy sans issue chescun q̄ est son prochein cosin collateral del entire sanke, de quel pluis long degrée q̄ il soit, poet inheriter & auer m̄ la tre come heire a luy.

And if a man purchase land in fee simple and die without issue, hee which is his next cosen collaterall of the whole bloud, how farre so euer hee bee from him in degree, may inherit and haue the land as heire to him.

Littleton sheweth here who shall bee heire to lands in Fée simple, for he intendeth not this case of an estate tatle, for that hee speaketh of an heire of the whole bloud, for that extendeth not to estates in tatle as shall bee said hereafter in this Chapter, Section 6.

¶ *Prochein cosin collaterall.* Neither excludeth hée brethren or sisters, because he hath a speciall case concerning them in this chapter, Sect. 5, and in his chapter of parceners, but this is intended where

where a man purchaseth lands and dieth without issue, and having neither brother nor sister, then his next cosin collaterall shall inherit. So as here is implyed a division of heires, viz. lineall (who euer shall first inherit) and collaterall, (who are to inherit for default of lineall) For in descents it is a maxime in Law quod linea recta semper præfertur transuersali. Lineall descent is conueyed downward in a right line, as from the grandfather to the father, from the father to the sonne, &c. Collaterall descent is deriued from the side of the lineall, as grandfathers brother, fathers brother, &c. Prochein cousin collaterall enheritera doth giue a certaine direction to the next cosin to the son, and therefore the fathers brother and his posteritie shall inherit before the grandfathers brother and his posteritie. Et sic de cæteris, for propinquior excludit propinquum, & propinquus remotum, & remotus remotiorem.

Ro. 4. Glanuil. lib. 7. ca. 3. 4. Bract lib. 2. c. 30. fo. 65. Britton cap. 119. Fleta lib. 6. cap. 1. & 2.

Bract. lib. 2. c. 30. fo. 64. Fleta lib. 5. cap. 5. & lib 6. ca. 1. & 2. Britton ca. 119. Mirror 11. ca. 1. sect. 3. 30. Ass. p. 47.

19. R. 2. tit. gar. 100.

30. Ass. p. 47.

Lib. 1 Shellys case Lib. 3. 40.

Upon this word (Prochein) I put this case. One hath issue two sonnes A. and B. and dieth, B. hath two sonnes C. and D. and dieth. C. the eldest sonne hath issue and dieth: A. purchaseth lands in fee simple and dieth without issue, D. is his next cousin, and yet shall not inherit, but the issue of C. for he that is inheritable is accounted in law next of bloud. And therefore here is vnderstood a diuision of next, viz. next, jure repræsentationis. and next, jure propinquitatis, that is, by right of representation and by right of propinquitie. And Littleton meaneth of the right of representation, for legally in course of descents he is next of bloud inheritable. And the issue of C. doth represent the person of C. and if C. had liued he had beene legally next of bloud. And whensoeuer the father if he had liued, should haue inherited, his lineall heire by right of representation shall inherit before any other, though another bee jure propinquitatis nearer of bloud. And therefore Littleton intendeth his case of next cosin of bloud immediately inheritable. So as this produceth another diuision of next bloud, viz. immediately inheritable, as the issue of C. and mediately inheritable as D. if the issue of C. dye without issue, for the issue of C. and all that liue be they neuer so remote shall inherit before D. or his line, and therfore Littleton saith well de quel pluis long degree que il soit. And here ariseth a diuersitie in Law betweene next of bloud inheritable by descent, and next of bloud capable by purchase. And therefore in the case before mentioned if a Lease for life were made to A. the remainder to his next of bloud in fee. In this case as hath beene said D. shall take the remainder, because he is next of bloud and capable by purchase, though he be not legally next to take as heire by descent.

Sect. 3.

VNcore le pier est pluis prochein de sanke. And therefore some doe hold vpon these words of Littleton that if a Lease for life were made to the sonne the remainder to his next of bloud, that the father should take the remainder by purchase, and not the vncle, for that Littleton saith the father is next of bloud, and yet the vncle is heire. As if a man hath issue two sonnes, and the eldest sonne hath issue a sonne and die, a remainder is limited to the next of his bloud, the younger son shall take it, yet the other is his heire.

5. E. 6. tit. Administr. Br. 47. Ratcliffes case vbi sup. See after in the chapter of Socage.

(p) Pl. Com. 293. b. Osbornes case.

max

MEs si soit pier & fits, & le pier ad vn frere q̄ est vncle a le fits, & le fits purchase tre en fee simple, & mor̄ sans issue vuat son pier, luncle auera la tre come heire al fits & nemy le pier, vncore le pier est pluis prochein de sanke; pur ceo que est vn maxime en le ley, Que enheritãce poet linealmẽt discender, mes nemy ascender. Uncor̄ si le fits ẽ tiel case mor̄ sans issue, & son vncle entra en la tre come heire a le fits,

BVt if there bee father & son, & the father hath a brother that is vncle to the son and the son purchase land in fee simple, and die without issue, liuing his father, the vncle shal haue the lãd as heire to the son, & not the father, yet the father is neerer of bloud; because it is a maxime in Law, That inheritance may lineally descend, but not ascend. Yet if the son in this case dye without issue, and his vncle enter into the Land as heire to the fits,

fits (ſicome il deuoit p la ley) & apres luncle deuia ſans iſſue, viuant le pier douſs le pier, auera la terre come heire al vncle, & nemy cõe heire a ſon fits, pur ceo que il veigne al terre p collaterall diſcent & nẽy p lineall aſcention.

ſonne (as by law hee ought) and after the vncle dieth without iſſue, liuing the father, the father ſhall haue the land as heire to the vncle, & not as heire to his ſonne, for that hee commeth to the land by collaterall diſcent & not by lineall aſcent.

conclusion of reaſon, ſo called (q) quia maxima eſt eius dignitas & certiſſima authoritas, atque quod maximè omnibus probetur, ſo ſure and vncontrolable as that they ought not to be queſtioned. (r) And that which our Author here and in other places calleth a Maxime, hereafter he calleth a Principle, and it is all one with a Rule, a common ground, Poſtulatum or an Axiome: and it were too much curioſitie to make nice diſtinctions betweene them. And it is

(q) Pl.Com.27.b.

(r) Sect.90.648.

well ſaid in our bookes, (ſ) neſt ny a diſputer lancient principles del ley. I neuer read any opinion in any booke old or new againſt this Maxime, but only in lib.rub. where it is ſaid, (t) ſi quis ſine liberis diſceſſerit pater aut mater eius in hæreditatem ſuccedat, vel frater & ſoror ſi pater & mater deſint, ſi nec hos habeat, ſoror patris vel matris & deinceps qui propinquiores in parentela fuerint hæreditario ſuccedant, & dum virilis ſexus extiterit, & hæreditas abinde ſit, fœmina non hæreditat'. But all our ancient Authors and the conſtant opinion euer ſince doe affirme the maxime.

(ſ) 12.H.4. Glanuill lib.7.cap.1. Bract.lib.2.cap.29.
(t) Lib.Rub.cap.70.

By this maxime in the concluſion of his caſe, onely lineall aſcention in the right line is prohibited, and not in the collaterall, (u) Quælibet hæreditas naturaliter quidem ad hæredes hæreditabiliter deſcendit, nunquam quidem naturaliter aſcendit, deſcendit itaque jus quaſi ponderoſum quod cadens deorſum recta linea vel tranſuerſali, & nunquam reaſcendit ea via qua deſcendit poſt mortem anteceſſorum, à latere tamen aſcendit alicui propter defectum hæredum inferius prouenientium; ſo as the lineall aſcent is prohibited by law, and not the collaterall. And in prohibiting the lineall aſcent, the Common Law is aſſiſted with the Law of the 12. tables.

(u) Britt.ca.119. Fleta lib.6.ca.1. Numb. ca.27. Ratcliffs caſe vbi ſupra.

Here our Author for the confirmation of his opinion draweth a reaſon and a proofe (as you haue perceiued) from one of the maximes of the Common Law: Now that I may here obſerue it once for all, his proofes and arguments, in theſe his three bookes, may be generally diuided into two parts, viz. from the Common Law and from Statutes, of both which, and of their ſeuerall branches I ſhall giue the ſtudious reader ſome few examples, and leaue the reſt to his diligent obſeruation.

For the Common Law his proofes & arguments are drawen from 20. ſeuerall fountaines or places.

(a) Firſt, from the Maximes, Principles, Rules, Intendment and Reaſon of the Common Law, which indeed is the rule of the Law, as here, and in other places our Author doth vſe.

(b) Secondly, from the bookes, records, and other authorities of Law cited by him, Ab authoritate, & pronunciatis.

(c) Thirdly, from originall Writs in the Regiſter, à reſcriptis valet argumentum.

(d) Fourthly, from the forme of good pleading.

(e) Fifthly, from the right entrie of iudgements.

(f) Sixthly, à præcedentibus approbatis & vſu, from approued Precedents and Vſe.

(g) Seuenthly, à non vſu, from not vſe.

(h) Eightly, ab artificialibus argumentis, conſequentibus & concluſionibus, artificiall arguments, conſequents and concluſions.

Ninthly, (i) à communi opinione juriſprudentium, from the common opinion of the Sages of the Law.

Tenthly, (k) ab inconuenienti, from that which is inconuenient.

Eleuenthly, (l) à diuiſione, from a diuiſion, vel ab enumeratione partium, from the enumeration of the parts,

Twelfthly, (m) à maiore ad minus, from the greater to the leſſer, or (n) from the leſſer to the greater, (o) à ſimili, (p) à pari.

13. (p) Ab impoſſibili, from that which is impoſſible.

14. (q) A fine, from the end.

15. (*) Ab vtili vel inutili, from that which is profitable or vnprofitable.

16. (r) Ex abſurdo, for that thereupon ſhall follow an abſurditie, quaſi à ſurdo prolatam, becauſe it is repugnant to vnderſtanding and reaſon.

17. (ſ) A natura & ordine naturæ, from nature or the courſe of nature.

18. (t) Ab

(a) ſect.5.8.90.96.52.55. 57.59.65.99.130.146. 156.169.178.231.293. 302.352.360.376.377. 396.410.440.441.346. 347.462.431.
(b) ſect.20. where a number others are quoted.
(c) ſect.67.132.170.234. 241.263.613.614.
(d) ſect.38.170.183.469.
(e) ſect.148.249.
(f) ſect.88.74.76.145. 332.371.372.445.
(g) 108.733.
(h) ſect.170.264.283.302. 429.464.629.633.686. 340.418. 613.686.739.
(i) ſect.697.59.104.288. 332.478.
(k) ſect.87. where many others are quoted.
(l) ſect.13. where many more are quoted, but ſee chiefly, ſect. 381.
(m) ſect.438.439.441.
(n) ſect.18. (o) 301. &c.
(p) 291.298.409. &c.
(p) 129.440.
(q) ſect.46.194.
(*) ſect.361.
(r) ſect.722.
(ſ) ſect.114.223.129. 211.107.108.

18. (t) Ab ordine religionis, from the order of Religion.
19. (u) A communi præsumptione, from a common presumption.
20. (w) A lectionibus jurisprudentium, from the readings of learned men of Law.

From Statutes his arguments and proofes are drawne.

1. (x) From the rehearsall or preamble of the Statute.
2. By the bodie of the Law diuersly interpreted.

Sometime by other parts of the same Statute, which is benedicta expositio, & ex visceribus causæ.

(y) Sometime by the reason of the Common Law. But euer the generall words are to be intended of a lawfull Act, (z) and such interpretation must euer be made of all Statutes, that the innocent or he in whom there is no default may not be damnified.

¶ *En la ley.* There be diuers Lawes within the Realme of England. As first (a) Lex Coronæ, the Law of the Crowne.

2. (b) Lex & consuetudo Parliamenti. Ista lex est ab omnibus quærenda, à multis ignorata à paucis cognita.

3. (c) Lex naturæ, the Law of nature.

4. (d) Communis Lex Angliæ, the Common Law of England sometime called Lex terræ, intended by our Author in this and the like places.

5. (e) Statute Law, Lawes established by authoritie of Parliament.

6. (f) Consuetudines. Customes reasonable.

7. (g) Ius belli. The Law of Armes, Warre, and Chiualrie, in republica maximè conseruanda sunt iura belli.

8. (h) Ecclesiasticall or Canon Law in Courts in certaine Cases.

9. (i) Ciuill Law in certaine cases not onely in Courts Ecclesiasticall, but in the Courts of the Constable and Marshall, and of the Admiraltie, in which Court of the Admiraltie is obserued, la ley Oyron, anno 5. of Richard the first, so called, because it was published in the Isle of Oyron.

10. (k) Lex forestæ, Forest Law.
11. (l) The Law of Marque or reprisall.
12. (m) Lex mercatoria, Merchant, &c.
13. (n) The Lawes and Customes of the Isles of Iersey, Gernesey and Man.
14. (o) The Law and priuiledge of the Stannaries.
15. (p) The Lawes of the East, West, and middle Marches, which are now abrogated.

But hereof this little taste for our Student, that he may be capable of that which he shall read concerning these and others in Records, and in our bookes, and orderly obserue them, shall suffice.

¶ *Et son vncle enter en la terre.* For if the vncle in this case doth not enter into the land, then cannot the Father inherit the land, for there is another maxime in Law herein implyed. (q) That a man that claimeth as heire in Fée simple to any man by descent must make himselfe heire to him that was last seised of the actuall Freehold and inheritance. And if the Uncle in this case doth not enter, then had hee but a Freehold in Law, and no actuall Freehold, but the last that was seised of the actuall Freehold was the sonne to whom the father cannot make himselfe heire, and therefore Littleton saith, Et son vncle enter en la terre (si come deuoit per la ley) to make the father to inherit, as heire to the vncle. (r) Note that true it is that the vncle in this case is heire, but not absolutely heire, for if after the descent to him the father hath issue a sonne or daughter, that issue shall enter vpon the Uncle. (s) And so it is if a man hath issue a sonne and daughter, the sonne purchaseth land in fée and dieth without issue, the daughter shall inherit the land, but if the father hath afterward issue a sonne, this sonne shall enter into the Land as heire to his brother, and if he hath issue a daughter and no sonne, she shall be coparcener with her sister.

¶ *Sicome il deuoit per la ley.* These words as a key doe open the secrets of the Law, for hereupon it is concluded, that where the vncle cannot get an actuall possession by entrie or otherwise, there the father in this case cannot inherit. And therefore if an Aduowson be granted to the sonne and his heires, and the sonne die without issue, and this descend to the vncle, and he die before he doth or can present to the Church, the father shall not inherit, because he should make himselfe heire to the son, which he cannot doe. And so of a rent and the like. But if the vncle had presented to the Church, or had seisin of the rent, there the father should haue inherited. For Littleton putteth his case of an entrie into land but for an example, If the sonne make a Lease for life, and die without issue, and the reuersion descend to the vncle, and he die, the reuersion shall not descend to the father, because in that case he must make himselfe heire to the sonne. A. infeoffe the sonne with warrantie to him and his heires, the sonne dies, the vncle enters into the Land and dies, the father if he be impleaded shall not take aduantage of this warrantie

(t) Sect.202.
(u) Sect.440.
(w) Sect.481.
(x) Sect.13.&c. Sect.731.692.635.633. 441.103.193.154.140.2.
(y) Sect.464.
(z) Sect.731.685.
(a) 17.E.3.Rot.parl.nu. 39. 25.E.3.cap.1.Regist. inter Iura regia 61.&c.
(b) Commonly spoken of in parliament Rols.
(c) 13.E.4.9. Lib.7.Caluins case. Pl.Com. Sharingtons case.
(d) This Law appeareth in our bookes and iudiciall records.
(e) These are of record in Rolls of parliament.
(f) Whereof you shall read in our Author, and in our bookes.
(g) Rot parl.2.R.2.nu.3. 13.R.2.ca.2.
(h) Lib.7.Caudries case articul.super cartas,&c.
(i) 37.H.6.Fortesc.ca. 32. 13.H.4.4. 28.H.8. ca.15.
(k) Carta de Foresta,&c. the eires of the Forests.
(l) 27.E.3.ca.17. Wi.ca. 23.4.H.5.cap.7.
(m) Mirror des Iustic.c.1. Bract.334.444. Fleta lib.2.ca.51.52.&c. 5.E.3.11. 38.E.3.7. 27.E.3.cap.8. Fortesc.32. F.N.B.117.13.E.4.9. Rot.parl.6.H.4.nu.43. 10.H.7.16.47.E.3.22. 30.E.1. Account.127. Carta mercatoria 31.E.1. rot.patent.
(n) Mich.41.E.3. coram rege in Thesaur. 13.E.3. 5.b. H.8.fol.5.Rot.pat. nu. 20.E.1.lib.7.Caluins case, fol.21.Regist.fol.22.
(o) 50.E.3.Rot.parl. 50.E.3. Rot. patent.&c.
(p) 31.H.6.ca.3.4.Ia.c.1.
(q) 11.H.4.11. 10.Ass.37. 34.Ass.p.10. 19.E.2. Quar.imped.177. 45.E.3.13. 40.Ass.p.6.
(r) 11.Ass.p.6. Doct. & Stud. 12.b. 32.H.6.35.
(s) 19.H.6.61.

2 Inst.54.

Ro:334.

v.3.Rp. Ratcliffs case. fol.40.

2 Ro.743.

rantie, for then he must vouch A, as heire to his sonne, which hee cannot doe, for albeit the warrantie descended to the vncle, yet the vncle leaueth it as he foundit, and then the father by Littletons (deuoir) cannot take aduantage of it. For Littleton Sect. 603. saith that warranties shall descend to him that is heire by the Common Law, and Sect. 718. he saith that euerie warrantie which descends, doth descend to him that is heire to him which made the warranty by the common Law, which proueth that the father shall not be bound by the warrantie made by the sonne, for that the father cannot be heire to the sonne, that made the warrantie. And a warrantie shall not goe with tenements, whereunto it is annexed, to any especiall heire but alwaies to the heire at the Common Law. And therefore if the Vncle bee seised of certaine lands, & is disseised, the sonne release to the disseisor with warrantie, and die without issue, this shall bind the vncle, but if the vncle die without issue, the father may enter, for the warrantie cannot descend vpon him. So if the sonne concludeth himselfe by pleading concerning the tenure and seruices of certaine lands, this shall binde the vncle, but if the vncle die without issue, this shall not binde the father, because he cannot be heire to the sonne, and consequently not to the estoppell in that case: but if it be such an estoppell as runneth with the land, then it is otherwise.

Vid. Sect. 603. 718.

Vid. Sect. 735 736. 737.

Hob. 31. 35. H. 6. 33. Iohn Crooks case.

Sect. 4.

CEt en tiel case, lon le fits purchase terre en fée simple, & deuie sauns issue, ceux de son sanke de part son pier enheriteront cõe heires a luy, deuant ascun de sanke de pt sa mere: mes sil nad ascun heire de part son pier, donques la tre discendera a les heires de part la mere. Mes si home pzent inheritrix des tres en fée simple, q̃ ux ont issue fits, & deuiont, et le fits enter en les tenements, come fits & heire a sa mere, & puis deuie sans issue, les heires de part la mere doyent enheriter les tenements & iammes les heires de part le pier. Et sil ny ad ascun heire de part la mere, donque le seignior de que la terre est tenus, auera la

AND in case, where the sonne purchaseth Land in Fee simple, and dies without issue, they of his bloud on the fathers side shall inherite as heires to him, before any of the bloud on the mothers side. But if he hath no heire on the part of his father, then the land shall descend to the heires on the part of the mother. But if a man marrieth an inheritrix of lands in fee simple, who haue issue a son, and die, and the sonne enter into the tenements, as sonne and heire to his mother, and after dies without issue, the heires of the part of his mother ought to inherit, and not the heires of the part of the father. And if hee hath no heire on the part of the mother, then the Lord

BY this it appeareth, that our Author diuideth heires into heires of the part of the father, and into heires of the part of the mother. (a) And note it is an old and true Maxime in Law, that none shall inherit any lands as heire, but only the bloud of the first purchaser, for * refert a quo fiat perquisitum. As for example, Robert Coke taketh the daughter of Knightley to wife and purchaseth lands to him and to his heires, and by Knightley hath issue Edward, none of the bloud of the Knightleys though they be of the bloud of Edward shall inherit, albeit hee had no issue died but them, because they were not of the bloud of the first purchaser, viz. of Robert Coke.

Vid. Sect. 354. an excellent point.

(a) Pl. com. Sir. Edward Clere's case 47.

(*) Fleta lib. 6. ca. 1. 2. &c. Bracton lib. 2. fol. 65. 67. 68. 69. &c. Britton ca. 119. 24. E. 3. 50. 36. E. 3. 29 30. 38. 49. E. 3 12. 49. Ass. p. 4 12. E. 4. 14. Pl. com. 445. & 450. 7. E. 6 Dyer 6. 24. E. 3. 24. 37 Ass. 4. 40. E. 3 9. 42. E. 3. 10. 45. E. Releases 28. 7. H. 5. 3 4. 8 Ass. 6. 35. Ass. 2. 5. E. 4. 7 3. H. 5. 21. H. 7 33. 40. ass. 6. Ratcliffs case lib. 3. fol. 42.

(b) *Ceux del sank de part son pier.* Here it is to be vnderstood, that the father hath two immediate blouds in him, viz. the bloud of his father, and the bloud of his mother, both these blouds are of the part of the father. (c) And this made ancient Authors say, that if a man be seised of lands in the right of his wife, and is attainted of felony, and after hath issue, this issue should not inherit his mother, for that he could derive no bloud inheritable from the father. And both these blouds of the part of the father must be spent before

(b) Bracton. vbi supra. Fleta. vbi supra. Britton. ca. 118. 119. Pl. com. 445. Cleres case. Dy. 314. 95. Tr. 19. E. 1. in Banco Rot. 25. Lincoln. Will. Scels. case.

(c) Britton. fol. 15. Fleta lib. 1. ca 18. Pl. com. 445. 446. &c. Cleres case.

before the heire of the bloud of the part of the mother shall inherit, wherein euer the line of the male of the part of the father, (that is) the posteritie of such male, bee they male or female, (who euer in descents are preferred) must faile before the line of the mother shall inherit, (d) and the reason of all this is for that the bloud of the part of the father is more worthy, & more neere in iudgement of Law, than the bloud of the part of the mother.

(d) 19 R. 2. garr. 100.

Britton ca. 118. 119. Fleta lib. 6. ca. 2.

¶ *Deuant ascun del sanke del part del mere.* And it is to bee obserued, that the mother hath also two immediate bloods in her, (viz.) her fathers bloud, and her mothers bloud. Now to illustrate all this by example. Robert Fairefield Sonne of Iohn Fairefield, and Iane Sandie, take to wife Anne Boyes Daughter of Iohn Boyes and Iane Bewpree, and hath Issue William Fairefield who purchaseth lands in fee. Here William Fairefield hath foure immediate bloods in him, two of the part of his father, viz. the bloud of the Fairefields, and the bloud of the Sandyes, and two of the part of his mother, viz. the bloud of the Boyses, and the bloud of the Bewprees, and so in both cases vpward in infinitum. Now admit that William Fairefield die without issue, first the bloud of the part of his father, viz. of the Fairefields. and for want thereof the bloud of the Sandies (for both these are of the part of the father) if both these faile, then the heires of the part of the mother of William Fairefield shall inherit, viz. first the bloud of the Boyses, and for default therof the bloud of the Bewprees.

terre per Escheat. En mesme le maner est, si tenements discendont a le fits de part le pier, & il enter & puis morust sans issue, cel terre discendra as heires de part le pier, & nemy as heires de part la mere. Et sil ny ad ascun heire de part le pier, donques le seignior, de que la terre est tenus, auera la terre per Escheat. Et sic vide diuersitatem, lou le fits purchase terres ou tenements, en fée simple, & lou il vesent eins a tiels terres ou tenements per discent de part sa mere ou de part son pier.

of whom the land is holden, shall haue the land by Escheat. In the same manner it is, if lands descend to the sonne, of the part of the father, and hee entreth, and afterwards dies without issue, this Land shall descend to the heires on the part of the father, and not to the heires on the part of the mother. And if there bee no heire of the part of the father, the Lord of whom the Land is holden shall haue the land by Escheat. And so see the diuersitie, where the sonne purchaseth lands or tenements in fee simple, and where hee commeth to them by descent on the part of his mother, or on the part of his father.

Rlf. 450. b. 455. b.

It is necessarie to be knowne in what cases the heire of the part of mother shall inherit, and where not. If a man be seised of lands as heire of the part of his mother, and maketh a feoffment in fee, and taketh backe an estate to him and to his heires, this is a new purchase, and if he dyeth without issue, the heires of the part of the father shall first inherit. If a man so seised maketh a feoffment in fee vpon condition, & die, the heire of the part of the father which is the heire at the common law shall enter for the condition broken, but the heire of part of the mother shall enter vpon him, and enioy the land. (m) A man so seised maketh a feoffment in fee reseruing a rent to him and to his heires, this rent shall goe to the heires of the part of the father; but (n) if he had made a gift in tayle, or a lease for life reseruing a rent, the heire of the part of the mother shall haue the reuersion, and the rent also, as incident thereunto, shall passe with it, but the heire of the part of the mother shall not take aduantage of a condition annexed to the same, because it is not incident to the reuersion, nor can passe therewith. (o) If a man had been seised of a mannor as heire on the part of his mother, and before the Statute of Quia emptores terrarum, had made a feoffment in fee of parcell to hold of him by rent and seruice, albeit they be newly created, yet for that they are parcel of the mannor, they shall with the rest of the mannor descend to the heire of the part of the mother, quia multa transeunt cum vniuersitate quæ per se non transeunt. If a man hath a rent seeke of the part of his mother, and the tenant of the land granteth

9. H. 7. 24.

(m) 7. H. 6. 4. Lib. 1. fol. 100. Shelleyes case.

(n) 5. E. 2. tit. anowry 207. Rlf. 8. 54. b.

(o) 5. E. 2. anowry 207. Dy. 165. a. Sant. 134. a. Mo. 161.

Lib. 8. 54. a.

granteth a distresse to him and his heires, and the Grantor dieth, the distresse shall goe with the rent to the heire of the part of the mother as incident or appurtenant to the rent, for now is the rent secke become a Rent charge. Pasch 23. a.

(p) A man so seised as heire on the part of his mother maketh a Feoffment in Fee to the vse of him and his heires, the vse being a thing in trust and confidence shall ensue the nature of the land, and shall descend to the heyre on the part of the mother. (q) A man hath a Seigniorie as heire of the part of his mother, and the tenancie doth escheat, it shall goe to the heire of the part of the mother. If the heire of the part of the mother of land whereunto a Warrantie is annexed is impleaded and Vouche, and iudgement is giuen against him, and for him to recouer in value, and dieth before execution (r) the heire of the part of the mother shall sue execution to haue in value against the Vouchee, for the effect ought to pursue the cause, and the recompence shall ensue the losse.

(p) 5. E. 4. 4. lib. 1. fol. 100. Shelleyes case. 27 H. 8. Dyer Bukenhils case. 32. H. 8. gard. Brooke 93 13. H. 7. 6.
(q) 16. E. 3. age. 46.
(r) Pl. Com. 192. & 513. See more of this in the chapter of Warrantie.

If a man giueth lands to a man, to haue and to hold to him and his heires on the part of his mother, yet the heires of the part of the father shall inherit, for no man can institute a new kinde of inheritance not allowed by the Law, and the words (of the part of his mother) are void, as in the case that Littleton putteth in this Chapter. If a man giueth lands to a man to him and his heires males, the Law reiecteth this word males, because there is no such kinde of inheritance, whereof you shall read more in his proper place.

A man hath issue a sonne, and dieth, and the wife dieth also, lands are letten for life, the remainder to the heires of the wife, the sonne dieth without issue, the heires of the part of the father shall inherit, and not the heires of the part of the mother, because it vested in the sonne as a Purchaser. And the rule of Littleton holdeth aswell in other kinde of Inheritances, as in Lands and Tenements. (t) And therefore if there be Lord, seme mesne, and tenant, and the Meine binde her selfe and her heires by her Deed to the acquitall of the tenant, the mesne take husband, the Tenant by his Deed granteth to the husband and his heires, that hee or his heires shall not be bound to acquitall, the husband and wife haue issue, and die, this issue, being bound as heire to his mother, shall not take benefit of the said grant of discharge, for that extends to the heires of the part of the father, and not to the heires of the part of the mother, and therefore the heire of the part of the mother was bound to the Acquitall. And thus much for the better vnderstanding of Littletons Cases concerning the heire of the part of the mother shall suffice.

(t) 38. E. 3. 12.

¶ *Mes si home prist feme inheritrix, &c.* Here there is another maxime, (v) That whensoeuer Lands doe descend from the part of the mother, the heires of the part of the father shall neuer inherit. And likewise when Lands descend from the part of the father, the heires of the part of the mother shall neuer inherit. Et sic paterna paternis, & è conuerso materna maternis. For more manifestation hereof, and of that which hereafter shall bee said touching Descents, see a Table in the end of this Chapter.

(v) 39. E. 3. 29. 49. E. 3. 12.

¶ *Auera la terre per Escheat.* (u) Escheat, Escheata is a word of art, and deriued from the French word Eschear (id est) cadere, excidere or accidere, and signifieth properly when by accident the Lands fall to the Lord of whom they are holden, in which Case we say the fee is escheated. And therefore, of some, Escheats are called excadentiæ or terræ excadentiales (w) Dominus vero capitalis loco hæredis habetur quoties per defectum vel delictum extinguitur sanguis sui tenentis, loco hæredis & haberi poterit nisi per modum donationis sit reuersio cuiusque tenementi. And Ockam (who wrote in the reigne of Henry the second) treating of tenures of the King, saith, Porro escheatæ vulgo dicuntur, quæ decedentibus his quæ de Rege tenent, &c. cum non existit ratione sanguinis hæres ad fiscum relabuntur. (x) Also as an Escheat doth happen two manner of wayes, aut per defectum sanguinis, i. for defaut of heire, aut per delictum tenentis, i. for felonie, and that is by iudgement three manner of wayes, aut quia suspensus per collum, aut quia abjurauit regnum, aut quia vtlegatus est. And therefore, they which are hanged by Martiall Law, in furore belli forfeit no Lands: and so in like Cases Escheats by the Ciuilians are called Caduca.

(u) Vide sect. 130. Glanuill lib. 7. cap. 19. Bract. lib 3. fol. 118. Fleta lib 5. cap. 5. & lib 3. cap. 10. Britton ca. 37. & cap. 118. F. N. B. 100. Tr. 19. E. 1. in Banco Rot. 25.
(w) Fleta lib. 6. cap. 1. Ockam cap. quod non absoluitur, &c.
(x) Pl. Com. Dame Hales case.

(y) The father is seised of Lands in fee holden of I. S. the son is attainted of high treason, the father dieth, the Land shall escheat to I. S. propter defectum sanguinis, for that the father dieth without heire. And the King cannot haue the Land because the sonne neuer had any thing to forfeit. But the King shall haue the Escheat of all the Lands whereof the person attainted of high treason was seised, of whomsoeuer they were holden.

(y) Pl. Com. in Nicholls case.

(z) In an Appeale of Death or other Felony, &c. processe is awarded against the Defendant, and hanging the processe the Defendant conueyeth away the land, & after is outlawed, the conueyance is good & shall defeat the Lord of his Escheat, but if a man be indited of felony, and hanging the processe against him, he conueyeth away the land, and after is outlawed, the Conueyance shall not in that case preuent the Lord of his Escheat. And the reason of this diuersitie is manifest: For in the case of the Appeale, the writ containeth no time when

(z) 38. E. 3. f. 37. 30. H. 6. Bract. l. 2. tit. de Forf. Stamf. pl. cor. 192. and according to this diuersitie was is resolued in 5. E. 6. as it appeareth by my Lord Diers Manuscript. Pasch 390, 6.

the Felony was done, and therefore the Eſcheate can relate but to the outlawrie pronounced. But the inditement containeth the time when the felony was committed, and therefore the eſcheate vpon the outlawrie ſhall relate to that time. Which caſes I haue added, to the end the Student may conceiue, that the obſeruation of Writs, Inditements, Proceſſe, Iudgements, and other Entries, doth conduce much to the vnderſtanding of the right reaſon of the Law.

(a) Mirror ca. 1. ſect. 5. 51.H.3.ſtatutum de Scac. Britton fo. 33. 34. Flet.lib.1.cap.36.& lib.2.cap.34.35. Regiſt.301. his Oath.18. E.1.Ro.Parl.Parl.21.E. 1.Rot.1.29.E.1.ſtat.de Eſchaetoribus. 14. E. 3. c.8. 28.E.1.ca.18. F.N.B. 100.c. Stamf. Prær.81. 1.H.8 ca.8. 3.H.8. ca.2. Capitula Eſchaetriæ in Vet. Magna carta,fo.160. 161. &c.

Of this word (Eſchaeta) here vſed by our Author, commeth (a) Eſchaetor, an ancient Officer ſo called, becauſe his office is properly to looke to Eſcheats, Wardſhips, and other caſualties belonging to the Crowne. In ancient time there were but two Eſcheators in England, the one on this ſide of Trent, and the other beyond Trent, at which time they had Subeſchaetors. But in the reigne of Edward the ſecond, the Offices were diuided and ſeuerall Eſchaetors made in euerie Counties for life, &c. and ſo continued vntill the reigne of Edward 3. And afterwards by the ſtatute of 14 E 3. it is enacted by authoritie of Parliament that there ſhould be as many Eſcheators aſſigned, as when King Edward 3. came to the Crowne, and that was one in euerie Countie, and that no Eſcheator ſhould tarrie in his office aboue a yeere, and by another ſtatute to be in office but once in three yeares, the Lord Treaſurer nameth him.

And hereof alſo commeth Eſchaetria, which ſignifieth the Eſcheaterſhip, or the office of the Eſcheater. But now let vs heare what our Author will further ſay vnto vs.

(b) 7.E.11.12. & Ro.8. Fitz.N.B.33.9.E.3.26. 17.E.2.ſtat.de templariis.

¶ Et ſic vide, &c. This kinde of ſpeech is often vſed by our Author, and doth euer import matter of excellent obſeruation, which you may finde in the Sections noted in the margent*.

* Sect.147.149.248. 289.417.667.&c.

And it is to be well obſerued, that our Author ſaith, Sil nad aſcun heire, &c. la terre eſchaetera. In which words is implyed a diuerſitie (as to the Eſcheate) betweene Fee ſimple abſolute, which a naturall body hath, and Fee ſimple abſolute which a body politique or incorporate hath. (b) For if land holden of I. S. be giuen to an Abbot and his Succeſſors: In this caſe if the Abbot and all the Couent die, ſo that the body politique is diſſolued, the Donor ſhall haue againe this land, and not the Lord by Eſcheat. And ſo if land be giuen in Fee ſimple to a Deane and Chapter, or to a Maior & Commonaltie, and to their Succeſſors, and after ſuch body politique or incorporate is diſſolued, the Donor ſhall haue againe the land, and not the Lord by Eſcheat. And the reaſon and cauſe of this diuerſitie is, for that in the caſe of a body politique or incorporate the Fee ſimple is veſted in their politique or incorporate capacitie created by the policie of man, and therefore the Law doth annex a condition in Law to euery ſuch gift and grant, That if ſuch body politique or incorporate be diſſolued, that the Donor or Grantor ſhall re-enter, for that the cauſe of the gift or grant faileth, but no ſuch condition is annexed to the eſtate in Fee ſimple veſted in any man in his naturall capacitie, but in caſe where the Donor or Feoffor reſerueth to him a tenure, and then the Law doth imply a Condition in Law by way of Eſcheat. Alſo (as hath beene ſaid) no Writ of Eſcheat lyeth but in the three caſes aforeſaid, and not where a body politique or incorporate is diſſolued.

Sect. 5.

¶ NOw commeth our Author to the deſcent betweene brethren, which hee purpoſely omitted before. ¶ Diſcent, deſcenſus commeth of the Latine word deſcendo, and, in the legall ſenſe, it ſignifieth, when lands do by right of bloud fall vnto any after the death of his Anceſtors: or a deſcent is a meanes whereby one doth deriue his title to certaine lands, as heire to ſome of his Anceſtors. And of this, & of that which hath beene ſpoken doth ariſe another diuiſion of eſtates in fee ſimple, viz. euery man that hath a lawfull eſtate in fee ſimple, hath it either by deſcent, or purchaſe.

¶ Item ſi ſoint trois freres, & le mulnes frere purchaſe terres en fee ſimple & deuie ſauns iſſue, leigne frere auera la terre per diſcent & nemy le puiſne, &c. Et auſi ſi ſoint trois freres & le puiſne purchaſe terres en Fee ſimple & deuie ſans iſſue. leigne frere auera la terre per diſcent &

ALſo if there bee three brethren, and the middle brother purchaſeth lands in Fee ſimple, and die without iſſue, the elder brother ſhall haue the Land by deſcent, and not the younger, &c. And alſo if there be three brethren, and the youngeſt purchaſe lands in Fee ſimple, & die without iſſue, the eldeſt brother ſhall

nemy

nemy le mulnes, pur ceo que leigne est pluis digne de sanke.

haue the land by descent & not the middle, for that the eldest is most worthy of bloud.

¶ *Leigne est pluis digne de sanke.* It is a maxime in Law that the next of the worthiest bloud shall euer inherit, as the male and all descendant from him before the female, and the female of the part of the father before the male or female of the part of the mother, &c. because the female of the part of the father is of the worthiest bloud. (c) And therefore among the males the eldest brother and his posteritie shall inherit lands in fee simple as heire before any younger brother, or any descending from him, because (as Littleton saith) he is pluis digne de sanke. Quod prius est dignius est, and qui prior est tempore potior est jure. Si quis plures filios habuerit ius proprietatis primo descendit ad primogenitum, eo quòd inuentus est primo in rerum natura. In King Alfreds time Knights fees descended to the eldest sonne, for that by diuision of them betweene males the defence of the Realme might be weakned, but in those dayes Socage fee was diuided betweene the heires males, and therewith agreeth Glanuill. * Cum quis hæreditatem habens moriatur, &c. si plures reliquerit filios, tunc distinguitur verum ille fuerit miles, siue per feodum militare tenens, aut liber Sockmannus, quia si miles fuerit aut per militiam tenens, tunc secundum ius regni Angliæ primogenitus filius patri succedit in toto, &c. si verò fuerit liber Sockmannus, tunc quidem diuidetur hæreditas inter omnes filios, &c. But hereof more shall be said hereafter in his proper place.

(c) Britton cap. 119. Bract. lib. 2. cap. 30. 277. 279. 3. E. 3. 26. 3. Eliz. Dyer 138. Stanford prær. 52, 58. 3. E. 1. tit. auowric. 235. 32. E. 3. discent. 80. Bra. lib. 4. 211. Fleta lib. 6. cap. 2. Glanuill lib. 7. cap. 1. Mirror cap. 2. Sect. 3.

* Glanuil lib. 7. cap. 3. & ca. 1. Vid. Pl. Com. 229. b.

Sect. 6.

¶ Item est ascauoir, q̄ nul auera terre de fee simple per discent cõe heire a ascun home, si non que il soit son heire dentire sanke. Car si home ad issue deux fits per diuers venters & leigne purchase terres en fee simple & morust sans issue, le puisne frere nauera la terre, mes luncle leigne frere ou auter son procheine cosin ceo auera, pur ceo que le puisne frere est de demy sanke al eigne frere.

ALso it is to bee vnderstood, that none shall haue land of Fee simple by descent as heire to any man, vnlesse he be his heire of the whole bloud, for if a man hath issue two sonnes by diuers venters, and the elder purchase lands in Fee simple, and dye without issue, the younger brother shall not haue the land, but the Vncle of the elder brother, or some other his next cosin shall haue the same, because the younger brother is but of halfe bloud to the elder.

¶ NO man can be heire to a Fee simple by the Common Law, (d) but hee that hath sanguinem duplicatum, the whole bloud, that is both of the father and of the mother, for as the halfe bloud is no bloud inheritable by descent, because that hee that is but of the halfe bloud cannot be a compleat heire, for that he hath not the whole and compleat bloud, and the Law in descents in Fee simple doth respect that which is compleat and perfect. And this maxime doth not onely hold where lands (whereof Littleton here speaketh) are claimed or demanded as heire, (e) but also in case of appeale of death: for if one brother be slaine, the other brother of the halfe bloud shall neuer haue an appeale (albeit he shall recouer nothing therein either in the realtie or personaltie) because in the eye of the Law hee is not heire to him. Also this rule extends to a warrantie as our Author himselfe elsewhere holdeth.

(d) Bract. lib. 4. 279. b. idem lib. 2. fo. 65. Britton cap. 119. Fleta lib. 6, ca. 1. 1. E. 3. 19. Iohn Gifford's case. 31. E. 3. Conterpl. de voucher 88. 40. Ass. 6. 4. E. 2. Formd. 49. Vid. Ratcliffes case, lib. 3. fol. 40. 41.

(e) 7. H. 4. 15.

Sect. 737.

Sect. 7.

¶ ET si home ad issue fits & file

ANd if a man hath issue a son and a

¶ This is put for an example to illustrate that which hath beene

Britton cap. 119.

borne said, and needeth no explanation. And herewith agreeth Britton.

v. 3. Rop. 40. 41. 42 Ratcliff's case. whom yt robe with plead. C Fulbrook. Sect. 8. explained.

per vn venter, & fits per auter venter, & le fits del primer venter purchase terres en fée, & mor sans issue, la soer auera la terre p discent, come heire a sa frere & nyy le puisne frere, pur ceo que la soer est de le entire sanke a son eigne frere.

daughter by one venter, and a son by another venter, & the son of the first venter purchase lands in fee and dye without issue, the sister shal haue the land by descent as heire to her brother, & not the younger brother, for that the sister is the whole bloud of her elder brother.

Sect. 8.

¶ *Seisie de terres en Fee simple.* These words exclude a seisin in fee taile, albeit he hath a fee simple expectant. (f) And therefore if Lands be giuen to a man and his wife, and to the heires of their two bodies, the remainder to the heires of the husband, and they haue issue a sonne, and the wife dyeth, and he taketh another wife, and hath issue a sonne, the father dieth, the eldest son entreth, and dyeth without issue, the second brother of the halfe bloud shall inherit, because the eldest sonne by his entrie was not actually seised of the fee simple, being expectant but onely of the estate taile. And the rule is, that possessio fratris de feodo simplici facit sororé esse hæredé, and here the eldest son is not possessed of the fee simple but of the estate taile. And where Littleton speaketh onely of Lands (g) yet there shall bee possessio fratris of an vse, of a seigniorie, a rent, an aduowson & of other hereditaments.

(f) 24.E.3.24.38. 31.E.3.Count de Vouch. 32. 32.E.3. tit. voucher. 37.Ass.p.4. 40.E.3.9. 40.E.3.10. 39.E.3.fol.13. 7.H.5.3.

(g) 5.E.4.fo.7. Pl.Com.fo.58. in Wimbishes case.

¶ *Et leigne fits enter.* (h) These words are materially added when the father dies seised of lands in fee simple, for if the eldest son doth not in that case enter, then without question the youngest

(h) 10.Ass.27. 34.Ass.10. 31.E.3.Count de Vouchee 88. 32.E.3.tit. Vouch.94.

¶ Et auri ou hõe est seisie de terres en Fée simple, & ad issue fits & file per vn venter, & fits per auter venter, & mor, & leigne fits enter, & mor sans issue, la file auera les tenements, & nemy le puisne fits, vncore le puisne fits est heire a le pere, mes nemy a son frere, mes si leigne fits ne entra en la tre apres la mort son pere, mes mor deuant ascun entrie fait per luy, donqs le puisne frere poit entrer, & auera le terre come heire a son pere. Mes iou leigne fits en le case auantdit entra apres la mort son pere, & ad ent possession, donqs la soer auera la terre

And also where a man is seised of lands in fee simple, and hath issue a sonne and daughter by one venter, and a son by another venter, and dye, and the eldest son enter, and dye without issue, the daughter shall haue the land, & not the younger son, yet the younger son is heire to the father but not to his brother, but if the elder sonne doth not enter into the land after the death of his father but dye before any entry made by him then the younger brother may enter & shall haue the land as heire to his father: but where the elder son in the case aforesaid enters after the death of his father, & hath pos-

Quia

Quia possessio fratris de feodo simplici facit sororem esse hæredem. Mes si sont deux freres per diuers venters, & leigne est seisie de terre en fée, & moꝝ sans issue, & son Uncle entra come prochein heire a luy quel aury moꝝ sans issue, ore le puisne frere puit auer la terre come heire al Uncle, pur ceo que il est de lentier sanke a luy, coment que il soit de demy sanke a son eigne frere.

session there the sister shall haue the land, Because *Possessio fratris de feodo simplici facit sororem esse hæredem.* But if there be 2. brothers by diuers venters, and the elder is seised of land in fee, & die without issue, & his vncle enter as next heire to him, who also dye without issue, now the younger brother may haue the land as heire to the vncle, for that hee is of the whole bloud to him, albeit hee bee but of the halfe bloud to his elder brother.

sonne shall be heire, because as it hath beene said before regularly hee must make himselfe heire to him that was last actually seised (or to the purchasor) and that was to the father where the eldest sonne did not enter. And therefore Littleton addeth that the son is heire to the father. (i) But when the eldest sonne in this case doth enter, then cannot the youngest sonne being of the halfe bloud bee heire to the eldest, but the land shall descend to the sister of the whole bloud. Yet in many cases albeit the sonne doth not enter into lands descended in Fee simple, the sister of the whole bloud shall inherit, & in some cases where the eldest sonne doth enter, yet the younger brother of the halfe bloud shall be heire.

(i) 11.H.4.11. 40.E.3.19. 45.E.3.13. 40 Ass.p.6. Ratcliffes case, lib. 3. fol. 41.

(k) If the father maketh a Lease for yeares, & the Lessee entreth & dieth, the eldest son dieth during the tearme

(k) 5.E.4.7.b. 3.H.7.5. 8.Ass.p.6. 45.E.3.tit.Releases, 28. Mo. 126.

before entrie or receipt of rent, the younger sonne of the halfe bloud shall not inherit but the sister, because the possession of the Lessee for yeares, is the possession of the eldest son, so as he is actually seised of the Fee simple, and consequently the sister of the whole bloud is to be heire. The same Law it is if the lands be holden by knights service, and the eldest sonne is within age, and the Gardian entreth into the lands. And so it is if the Gardian in Socage enter.

V. Dy. 292. 69.

But in the case aforesaid, if the father make a lease for life or a gift in tailе, and dyeth, and the eldest sonne dieth in the life of tenant for life or tenant in tailе, the younger brother of the halfe bleud shall inherit because the tenant for life or tenant in tailе is seised of the Freehold, and the eldest sonne had nothing but reuersion expectant vpon that Freehold or estate tailе, and therefore the youngest sonne shall inherit the land as heire to his father, who was last seised of the actuall Freehold. And albeit a rent had beene reserued vpon the lease for life, and the eldest sonne had receiued the rent and dyed yet it is holden by some * that the younger brother shall inherit because the seisin of the rent is no actuall seisin of the Freehold of the land. But 35. Ass.pl. 2. seemeth to the contrarie, because the rent issueth out of the land and is in lieu thereof, wherein the only question is, whether such a seisin of the rent be such an actuall seisin of the land in the eldest sonne as the sister may in a Writ of right make her selfe heire of this land to her brother. But it is cleere that (l) if there be a bastard eigne, and mulier puisne, and the father maketh a Lease for life or a gift in tailе be reseruing a rent and dye, and the bastard receiue the rent and dye, this shall barre the mulier, for the reason of that standeth vpon another maxime as shall manifestly appeare in his apt place, Sect. 399.

*7.H.5.34. per Hals & Logdington. 35.Ass.p.2. 1.Ro.628.

(l) 14.H.2. Bastard 26. Vid. Sect. 399.

¶ *Seisie des terres.* (m) But in this case if the eldest sonne doth enter and get an actuall possession of the Fee simple, yet if the wife of the father be indowed of the third part and the eldest sonne dyeth, the younger brother shall haue the reuersion of this third part notwithstanding the elder brothers entrie, because that his actuall seisin which he got thereby was by the endowment defeated. But if the eldest sonne had made a lease for life, and the Lessee had endowed the wife of the father, and tenant in dower had died, the daughter should haue had the reuersion, because the reuersion was changed and altered by the Lease for life, and the reuersion is now expectant on a new estate for life.

(m) 7.H.5.2.3.6.

Co.Lit.35.b. Post 191.b.

¶ *Enter.* Hereupon the question groweth, whether if the father be seised of diuers seuerall parcels of lands in one Countie, and after the death of the father the sonne entreth into one parcell generally, and before any actuall entrie into the other dyeth, this generall entrie into part shall vest in him an actuall seisin in the whole, so as the sister shall inherit the whole. And this is a quære in 21. H. 7. 33. a.

21.H.7.33.b

And some doe take a diuersitie when an entrie shall vest, or deuest an estate, that there must be seuerall entries into the seuerall parcels, but where the possession is in no man, but the freehold in Law is in the heire that entreth, there the generall entrie into one part reduceth all into his actuall possession. And therefore if the Lord entreth into a parcell generally for a Mortemaine, or the Feoffor for a condition broken, or the Disseisee into parcell generally, the entrie shall not vest nor deuest in these or like cases, but for that parcell. But when a man dies seised of diuers parcels in possession, and the freehold in Law is by a Law cast vpon the heire, and the possession in no man, there the entrie into parcell generally seemeth to vest the actuall possession in him in the whole. But if his entrie in that case be speciall, viz. that he enter only into that parcell and into no more, there it reduceth that parcell only into actuall possession.

¶ *Home seisie des terres.* What then is the Law of a Rent, Aduowson, or such things that lye in grant? (g) If a Rent, or an Aduowson doe descend to the eldest sonne, and he dyeth before he hath seisin of the Rent, or present to the Church, the Rent or Aduowson shall descend to the youngest sonne, for that he must make himselfe heire to his father, as hath beene oftentime said before. The like Law is of Offices, Courts, Liberties, Franchises, Commons of inheritance, and such like. (h) And this case differeth from the case of the tenant by the courtesie, for there if the wife dieth before the rent day, or that the Church become voyd, because there was no laches or default in him, nor possibilitie to get seisin, the Law in respect of the issue begotten by him will giue him an estate by the courtesie of England. But the case of the descent to the youngest sonne standeth vpon another reason, viz. to make himselfe heire to him that was last actually seised, as hath beene said.

(g) 19.E.2. Quere iuped. 377. 3.H.7.5. Ratcliffs case lib.3

(h) 7.E.3.66.tit.bar.293. 3.H.7.3.

¶ *En Fee simple.* (i) For halfe blood is not respected in estates in taile, because that the issues doe claime in by descent, per formam Doni, and the issue in taile is euer of the whole blood to the Donee.

Tofore 9. à

(i) 8.E.3.tit.49.E.3.12. Ratcliffes case lib.3.f.41.

¶ (k) *Possessio fratris de feodo simplici facit sororem esse hæredem.* Hereupon foure things are to be obserued, euerie word almost being operatiue, and materiall. First, That the brother must be in actuall possession: For Possessio est quasi pedis positio. Secondly, De feodo simplici, exclude estates in taile. Thirdly, Facit sororem esse hæredem. So as (l) Soror est hæres facta, and therefore some act must be done to make her heire, and the younger sonne is hæres natus, (m) if no act be done to the contrarie. And albeit the words be facit sororem esse hæredem, yet this doth extend to the issue of the sister, &c. who shall inherit before the younger brother. Fourthly, Of Dignities whereof no other possession can be had but such as descend (as to be a Duke, Marquesse, Earle, Vicount, or Baron) to a man and his heires, there can be no possession of the brother to make the sister to inherit, but the younger brother being heire (as Littleton saith) to the father, shall inherit the Dignitie inherent to the blood, as heire to him that was first created noble.

(k) Bracton lib.2.fo.65.& lib.4. fol.279. Britton cap.119. Fleta.li.6.c.2,24.E.3,30.

Ro.314.

(l) Ratcliffes case, lib.3. fol.42.

(m) Britton cap.119.

Fro.601.

And you shall vnderstand that concerning Descents there is a Law, parcell of the Lawes of England, called Ius Coronæ, and differeth in many things, from the generall law concerning the subiect. As for example, The King in any suit for any thing that pertaines to the Crowne shall not shew in certaine his cosinage as a subiect shall do, or as he himselfe shall do for things touching his Duchie. (n) And in the case of the King, if he hath issue a sonne, and a daughter by one venter, and a sonne by another venter, and purchaseth lands & dieth, and the eldest sonne enter & dieth without issue, the daughter shall not inherit these lands, nor any other Fee simple lands of the Crowne, but the younger brother shall haue them. Wherein note that neither possessio fratris doth hold of lands of the possessions of the Crowne, nor halfe blood is no impediment to the descent of the lands of the Crowne, as it fell out in experience after the decease of King Edward the sixth to the Queene Mary, and from Queene Mary to Queene Elizabeth, both which were of the halfe blood, and yet inherited not only the Lands which King Edward or Queene Mary purchased, but the ancient Lands parcell of the Crowne also.

6.E.6.c.1.

(n) 34.H.6.fol.34. Pl.Com.fol.245. 35.E.3. ca. de natis vltra mare.

A man that is King by descent of the part of his mother, purchase lands to him & his heires and dye without issue, this land shall descend to the heire of the part of the mother, but in the case of a subiect, the heire of the part of the father shall haue them.

Pl. Com. vbi supra. 234.b.

So King Henry the eighth purchased lands to him & his heires, and died hauing issue two daughters, the Lady Mary, and the Lady Elizabeth, after the decease of King Edward, the eldest daughter Queene Mary did inherit only, all his lands in fee simple. For the eldest daughter, or sister of a King shall inherit all his fee simple lands. So it is if the King purchaseth Lands of the custome of Gauelkinde, and dye hauing issue diuers sonnes, the eldest sonne shall only inherit these lands. And the reason of all these cases is, for that the qualitie of the person doth in these and many other like cases alter the descent, so as all the Lands and possessions whereof the King is seised in jure Coronæ, shall secundum jus Coronæ, attend vpon and follow the Crowne, and therefore to whomsoeuer the Crowne descend, those Lands and possessions descend also, for the Crowne and the Lands whereof the King is seised in jure Coronæ, are con-

Pl. Com. fol. 247. 234.b.

concomitantia. If the right heire of the Crowne be attainted of treason, yet shall the Crowne descend to him, and eo instante (without any other reuersall) the attaindre is vtterly auoided, as it fell out in the case of Henry the seuenth. (o) And if the King purchase lands to him and his heires, he is seised thereof in jure Coronæ, à fortiori, when hee purchases land to him his heires and successors.

But hereof this little taste shall suffice.

Pl. Com. 238. 1.H.7 fol.4.

(o) 43.E.3.fol.28.

Sect. 9.

CEt est ascauoir que cõ parol (enheritãce) nest pas tãt solement entendue, lou home ad trẽs ou tenements per discent denheritage, mes auxi chescun fee simple, ou taile que home ad per son purchase puit estre dit enheritance, pur ceo que ses heyres luy purront inheriter. Car en briefe de Droit que home porta de terre que fuit de son purchase demesne, le bře dirra: Quam clamat esse jus & hæreditatem suam. Et illint serra dit en diuers autres briefs, qux hõe ou fee porta ď s purchase demesn, cõe apiert p le Regist.

AND it is to wit, that this word (*inheritance*) is not only intended where a man hath Lands or Tenements by descent of inheritage, but also euerie Fee simple or taile which a man hath by his purchase may bee said an inheritance, because his heires may inherit him. For in a Writ of right which a man bringeth of land that was of his owne purchase, the Writ shall say, *Quam clamat esse ius & hæreditatem suam.* And so shall it be said in diuers other Writs which a man or woman bringeth of his owne purchase, as appeares by the Register.

CEt est ascauoir. This kind of speech is vsed twice in this Chapter, and oftentimes by our Author in all his three Bookes, and euer teacheth vs some rule of Law, or generall or sure leading point, as you shall perceiue by reading and obseruing of the same, which for the ease of the studious Reader I haue obserued.

Sect.45.46.57.59.80.100. 146.164.170.184.229. 243.259.274.280.293. 300 305.419.420 421. 489.632.677.749.

C *Quam clamat esse ius & hæreditatem suam.* (a) Here our Author declareth the right signification of this word (inheritance.) And true it is that in the Writ of right Patent, &c. Quando Dominus remittit Curiam suam, The words of the writ be, Quam clamat esse jus & hæreditatem suam, And in the Præcipe in capite, in a Cui in vita, (b) when the Defendant claimeth by purchase, the Writ is Quam clamat esse ius & hæreditatem suam. And with Littleton agreeth the Register, fol. 4. & 232 and the Booke in 49. E. 3. 22. against sodaine opinions 7.H.4.5. 10.H.6.9. 39.H.6.38. Pl. Com. Wimbeshes case 47. And yet in 7.H 4.5. which is the Booke of the greatest weight, Sir William Thirning Chiefe Justice of the Common Bench (as it seemeth doubting of it) went into the Chancerie to enquire of the Chancerie men the forme of the Writ in that case, and they said that the forme was both the one way and the other, so as thereby the opinion of Littleton is confirmed, and the Booke in 6.E.3.fol.30. is notable, for there in an Action of waste the Plaintife supposed, that the defendant did hold de hæreditate sua, and it is ruled, that albeit the Plaintife purchased the reuersion, yet the Writ should serue. And there it is said, It hath beene seene, that in a Cui in vita, the Writ was, which the demandant claimed as her right and inheritance, when it was her purchase. And so this point wherein there might seeme some contrarietie in bookes is manifestly cleared. But in the Statute of W. 2. cap. 5. de hæreditate vxorum by construction of the whole Statute is taken onely for the wiues inheritance by descent, and not by purchase, as appeareth in 1.E.2. tit. Quare imped. 43. 25.H.6.54. F.N.B.34.b.

(a) Sect.732. Bract.lib.2.fo.62.b. Flet.a lib.6.ca.1.

(b) Regist.fol.1.2.

Regist.fol.4.232. 49.E.3. 22. 7.H.4.5. 10.H.6.9. 39.H.6.38. 6.E.3.30. Pl. Com. Wimbeshes case, 47. & 58.b.

6. E. 3. 30.

W.2.ca.5. 1.E.2. tit.quare imped. 43. 35.H.6.54. F.N.B.34.b.

There be some that haue an inheritance (c) and haue it neither by descent nor properly by purchase but by Creation, as when the King doth create any man a Duke, a Marquesse, Earle, Viscount, or Baron to him and his heires, or to the heires males of his bodie, &c. hee hath an inheritance therein by Creation. A man may haue an inheritance in title of Nobilitie and Dignitie three manner of wayes, that is to say, by Creation, by Descent, and by Pur-

(c) Lib.6.fol.52,53. Countes de Rutlands case, lib.8.fol.16.17. the Princes case.

12 Co. 70. 1.

Prescription. By Creation two manner of ordinarie wayes (for I will not speake of a Creation by Parliament) by Writ, & by Letters Patents. Creation by Writ is the ancienter way, and here it is to be obserued; that a man shall gaine an inheritance by Writ. King Richard the second created Iohn Beauchampe de Holte Baron of Kedermisser by his Letters Patents, bearing date the 10. of October, anno regni sui 11. before whom there was neuer any Baron created by Letters Patents, but by Writ. And it is to bee obserued, that if hee be generally called by Writ to the Parliament, he hath a Fee simple in the Barony without any words of inheritance. But if he bee created by Letters Patents, the state of inheritance must be limited by apt words, or else the grant is void. If a man bee called by Writ to the Parliament, and the Writ is deliuered vnto him, and he dieth before hee commeth and sits in Parliament, whether he was a Baron or no? And it is to be answered that hee was no Baron, for the direction and deliuerie of the Writ to him maketh not him Noble; for the better vnderstanding whereof it is to be knowne that the words of the Writ in that case are, Rex &c. E. B. de D. Chiualier salutem. Quia de aduisamento & assensu concilii nostri pro quibusdam arduis & vrgentibus negotiis statum & defensionem regni nostri Angliæ, &c concernentibus quoddam Parliamentum nostrum apud Ciuitatem Westm. à 21. Octob. proxim. futuro teneri ordinauimus, & ibid. vobiscum & cum Prælatis, Magnatibus & Proceribus dicti regni nostri colloquium habere & tractatum, vobis in fide & ligeancia quibus nobis tenemini firmiter injungendo mandamus, quod consideratis dictorum negotiorum arduitate, & periculis imminentibus cessante excusatione quacunque, dictis die & loco personaliter intersitis nobiscum & cum Prælatis, Magnatibus, & proceribus supradictis, super dictis negotiis tractatur' vestrumque concilium impensur', &c. And this Writ hath no operation or effect vntill he sit in Parliament, and thereby his bloud is ennobled to him and his heires lineall, and thereupon a Baron is called a Peere of Parliament. (d) And if issue be ioyned in any action, whether hee bee a Baron, &c. or no, it shall not bee tried by Iurie, but by the Record of Parliament, which could not appeare vnlesse hee were of the Parliament. Therefore a Duke, Earle, &c. of another Kingdome, are not to bee sued by those names here, for that they are not Peeres of our Parliament. And albeit the Creation by Writ is the ancienter, yet the Creation by Letters Patents is the surer, for hee may bee sufficiently created by Letters Patents, and made Noble, albeit hee neuer sit in Parliament.

Lib.6.fol.52.53. Counteſſe of Rutlands caſe. 8.H.6.10. 48.E.3.30. 35.H.6.46. Pl.com.223.

(d) 35.H.6.46. Lil.6.53. 48.E.3.30.b. Mo.767. 48.Ass.p.6. 22.Ass.p.24. Regist.287. 11.E.3.breue 472. 20.E.4.6. 8 Ey.252. Lib.9.114. Snr Sanchers case.

(c) And it is to be obserued that Nobilitie may be granted for terme of life, by act in Law without any actuall Creation; as if a Duke take a wife, by the intermarriage shee is a Duchesse in Law, and so of a Marquesse, an Earle, and the rest, and in some other case. And there is a diuersitie betweene a woman that is Noble by Descent, and a woman that is Noble by marriage. (f) For if a woman that is Noble by Descent, marrie one that is vnder the degree of Nobilitie, yet she remaineth Noble still; but if shee gaine it by marriage, shee loseth it, if shee marrie vnder the degree of Nobilitie, and so is the rule to be vnderstood, Si mulier nobilis nupserit ignobili desinit esse nobilis. (g) But if a Dutchesse by marriage marrieth a Baron of the Realme she remaineth a Dutchesse and loseth not her name, because her husband is Noble, & sic de cæteris.

(c) Lib.6.fol.52.53. Countes de Rutlands caſe, 2.H.6.11. 22.Ass.24. 22.E.3.breue 254. 8.H.4.19. 11.H.4.15. Vide Fleta lib.6.ca.10.

(f) Lib.4.fol.118. Attons caſe, Tempore Mariæ Reginæ. Brooke noſme de dignitie 69. 14.H.6.18. 2.H.6.11.

(g) 22.H.6.52.

And as an estate for life may be gained by marriage, so may the King create either man or woman Noble for life (h) but not for yeares, because then it might goe to Executors or Administrators. The true diuision of persons is, that euerie man is either of Nobilitie, that is, a Lord of Parliament of the vpper House, or vnder the degree of Nobilitie, amongst the Commons, as Knights, Esquires, Citizens and Burgesses of the lower House of Parliament, commonly called the House of Commons, and hee that is not of the Nobilitie is by intendment of Law among the Commons.

(h) Lib.9.fol.97.a.98.b. Sir George Reynels caſe.

Come appiert per le Register. Which booke in the Statute of W. 2. ca. 24. is called Registrum de Cancellaria, because it containeth the formes of Writs at the Common Law that issue out of the Chancerie, tanquam ex officina Iusticiæ. There is a Register of originall Writs, and a Register of iudiciall Writs, but when it is spoken generally of the Register it is meant of the Register originall. For the antiquitie and excellencie of this Booke, see in my Preface to the eighth part of my Commentaries. This excellent Booke our Author voucheth diuers times in these Bookes, and so doth hee diuers other Authorities in Law of seuerall kindes, but with this obseruation, that he citeth no Authoritie, but when the case is rare or may seeme doubtfull, which appeareth in this, that he putteth no Case in all his three Bookes but hath warrant of good Authoritie in Law. For he knew well the rule, that perspicua vera non sunt probanda. And the like obseruation is made of Iustice Fitzherbert in his Booke of Natura breuium, that he neuer citeth Authoritie, but when the Case is rare or was doubtfull to him. The Authorities which our Author hath cited in his three Bookes I haue collected.

Vide Sect. 88.94.96.101. 157.234.318.383.412. 420.433.514.643.644. 657.660.692.702.729.

Sect. 10.

¶ Et de tiels choses de ſur hõe poit auer vn manuel occupation poſſeſſion ou reſceit, ſicõe des terres, tenemẽts, rents, & huiuſmodi, la home dirr̃ en count countant, & en plée pledont, que vn tiel fuit ſeiſie en ſon demeſne come de fée. Mes de tiels choſes que ne giſont en tiel Manuel occupation, &c. ſicome de aduowſon deſgliſe, & huiuſmodi, la il dirra que il fuit ſeiſie come de fée, & nemy en ſon demeſne come de fée, & en Latin il eſt en lun cas, Quod talis ſeiſitus fuit, &c. in dominico ſuo vt de feodo & en lauter caſe, quod talis ſeiſitus fuit, &c. vt de feodo.

AND of ſuch things whereof a man may haue a Manuell occupation, poſſeſſion or receipt, as of lands, Tenements, Rents, and ſuch like, there a man ſhall ſay in his Count Countant and Plea Pleadant, that ſuch a one was ſeiſed in his demeſne as of fee, but of ſuch things which doe not lye in ſuch Manuall occupation, &c. as of an Aduowſon of a Church and ſuch like, there he ſhall ſay, that hee was ſeized as of fee, and not in his Demeſne as of fee. And in Latine it is in one Caſe, *Quod talis ſeiſitus fuit in dominico ſuo vt de feodo*, and in the other Caſe, *Quod talis ſeiſitus fuit, &c. vt de feodo.*

¶ IN Count Countant. Count, i. narratio commeth of the French word Conte which in Latine is Narratio, & is vulgarly called a Declaration. The originall writ is according to his name Breue, briefe & ſhort, but the Count which the Plaintife or Demandant make is more narrative & ſpacious and certaine both in matter & in circumſtance of time and place, to the end the defendant may be compelled to make a more direct anſwer; ſo as the writ may be compared to Logicke, and the Count to Rhetoricke, and it is that which the Ciuilians call a Libell. And in that ancient book of the Mirror of Iuſtices, Lib. 2. cap. des Loiers, Contors are Serjants skilfull in Law, ſo named of the Count as of the principall part, and in W. 2. ca. 29. he is called Serjant Counter.

Mirror des Iuſtices.

W. 2. cap. 39.

¶ *En plea pleadant.* Placitum Here Littleton teacheth good pleading in this point, of which in his third Booke & Chapter of Confirmation, Sect. 534. he thus ſaith, Et ſaches mon fits que eſt vn des pluis honorables, laudables, & profitable choſes en noſtre ley, de auer le ſcience de bien pleader en actions reals & perſonels, & pur ceo, ieo toy counſaile eſpecialment de mettera ton courage, & cure de ceo apprender. And for this cauſe this word Placitum is derived à placendo, quia bene placitare ſuper omnia placet, and it is not as ſome haue ſaid, ſo called per Antiphraſin, quia non placet.

¶ *Seiſie*; Seiſitus commeth of the French word ſeiſin, i. poſſeſſio, ſauing that in the Common Law ſeiſed, or ſeiſin is properly applyed to Freehold, and poſſeſſed or poſſeſſion properly to goods and chattels; although ſometime the one is vſed in ſtead of the other.

Brack. lib. 4. fol. 265.
Idem lib. 5. fol. 372.
Britton fol. 205. 206.
Fleta lib. 5. cap. 5.
Stanf. prær. 8.
Pl. Com. fol. 191. Wrottesleyes caſe.

¶ *En ſon demeſne come de fee*, In Dominico ſuo vt in feodo. Dominicum is not onely that inheritance, wherein a man hath proper dominion or ownerſhip, as it is diſtinguiſhed from the lands which another doth hold of him in ſeruice, but that which is manually occupied, manured, and poſſeſſed, for the neceſſarie ſuſtentation, maintenance and ſuppoztation of the Lord and his houſhold, and ſauoureth de domo, of the houſe, either ad menſam, for his or their board and ſuſtentation, or manually receiued (as Rents) for bearing and defraying of neceſſarie charges publike or priuate. Of theſe (ſaith our Author) hee ſhould plead, that he is ſeiſed in dominico ſuo vt de feodo, i. de feodo dominicali, ſeu terra dominicali, ſeu redditu Dominicali, which is as much to ſay as Demeyne or Demaine, of the hand, i. manured by the hand, or receiued by the hand, and therefore he calleth it manuall occupation, poſſeſſion or receipt. And in Domeſday demeane land is called Inland, as for example, 4. bouatas terræ de Inland, & 10. bouatas in ſeruitio.

Domeſday.

¶ *En tiel manuel occupation, &c.* There is nothing in our Author but is worthy of

of obseruation. Here is the first (&c.) and there is no (&c.) in all his three Bookes (there being as you shall perceiue verie many) but it is for two purposes. First it doth imply some other necessarie matter. Secondly, that the Student may together with that which our Author hath said inquire what authorities there be in Law that treat of that matter, which will worke three notable effects: First, it will make him vnderstand our Author the better: Secondly, it will exceedingly adde to the Readers inuention. And lastly, it will fasten the matter more surely in his memorie, for which purpose I haue for his ease in the beginning set downe in these Institutes, the effect of some of the principall authorities in Law as I conceiue them concerning the same. In this place the (&c) implyeth possession or receipt, and such other matter as appeareth by my notes in this Section. As for the Authorities of Law, you shall finde the effect of them in this Section, and the like of the rest of the (&c.) which you shall finde in the Sections hereafter mentioned, omitting those (for auoyding of tediousnesse) that either are apparent, or which are explaned in some other places, viz. Sect. 20. 48. 102. 108. 120. 125. 136. 137. 146. 149. 154. 164. 166. 167. 168. 177. 179. 183 184. 194. 200. 202. 210 211. 217. 220. 216. 233. 240. 243. 244. 245. 248. 262. 264. 269. 270. 271. 279 320. 322. 323. 325. 326. 327. 329. 330. 335. 336. 341. 347. 348. 349. 350. 352. 355. 356. 359. 364. 365. 374. 375. 377. 381. 384. 389. 393. 395. 397. 399. 401. 402. 410. 417. 428. 433. 447. 449. 464. 470. 471. 477. 483. 489. 500. 501. 522. 532. 552. 553. 556. 558. 562 578. 591. 592. 593. 594. 603. 613. 624. 625. 630. 632. 634. 637. 638. 648. 659. 660. 661. 669. 687. 693. 700. 718. 745. 748. 749. All which I haue obserued and quoted here once for all for the ease of the studious Reader.

Britton 205. 206. optime.
Fleta lib. 6. cap. 5.
Idem lib. 3. cap. 15.

¶ *Vt de feodo.* Where (vt) is not by way of similitude, but to bee vnderstood positiuely that he is seised in fee. And so it is where one pleads a descent to one vt filio & hæredi, that is, to Io. S. that is sonne and heyre, & sic de cæteris, where (vt) denotat ipsam veritatem.

(i) 7. E. 3. 63. 24. E. 3. 74. 34. H. 6. 34. 19. E. 3. Quar. imp. 154. Mirror cap. 2. sect. 17.

¶ *Sicome de aduouson.* Of an Aduowson (i) wherein a man hath as absolute owner ship and propertie as he hath in Lands or Rents, yet hee shall not plead, that hee is seised in Dominico suo vt feodo, because that inheritance, sauouring not de domo, cannot either serue for the sustentation of him and his household, nor any thing can be receiued for the same for defraying of charges. And therefore he cannot say, that he is seised thereof in dominico suo de feodo, whereby it appeareth how the Common Law doth detest Simony, and all corrupt bargaines for presentations to any Benefice, but that (k) idonea persona for the discharge of the Cure should be presented freely without expectation of any thing; nay, so cautious is the Common Law in this point that the pl. in a Quare impedit should recouer no damages for the losse of his presentation vntill the Statute of W. 2. cap. 5. And that is the reason that Gardian in Socage (l) shall not present to an Aduowson, because he can take nothing for it, and by consequent hee cannot account for it. And by the Law hee can meddle with nothing that he cannot account for it. (m) And in a Writ of right of Aduowson, the patron shall not alledge the explees or taking of the profits in himselfe but in his incumbent. And hereby the old bookes shall bee the better vnderstood, viz. Bracton, lib. 4. tract. 3. cap. nu. 5. Est autem dominicum quod quis habet ad mensam, & proprie, sicut sunt Woodlands Anglice. And Fleta lib. 5. ca. 5. Est autem dominicum proprie terra ad mensam assignata: Dominicum etiam dicitur ad differentiam eius quod tenetur in seruitio. But of an Aduowson and such like he shall plead, that he is seised de aduocatione vt de feodo & jure.

(k) Lib. 6. fo. 51. Bosswels case.
Post 344. b.
(l) 8. E. 2. Presentment al Eglise 10. 7. E. 3. 39. 27. E. 3. 89. 29. E. 3. 5. 21. E. 3. Estorpel 240.
(m) 7. E. 3. 63. Bracton 263. 372. Fleta lib. 5. cap. 5.

7. E. 3. 4. 45. E. 3. 2.

¶ *Aduowson.* Aduocatio, signifying an aduowing or taking into protection, is as much as jus patronatus. Sir William Herle in 7. E. 3. fol. 4. saith, that it is not long past that a man did know what an Aduowson was, but when a man would grant an Aduowson hee granted, Ecclesiam the Church, and thereby the Aduowson passed, Vide 45. E. 3. 5. But surely the word is of greater antiquitie, for in the Register there is an originall Writ de recto Aduocationis, and in the originall Writ of Assise de darreine presentment the patron is called Aduocatus. (n) Vide W. 2. ca. 5. And so doth (o) Bracton call him. Aduocatus autem dici poterit ille ad quem pertinet jus aduocationis alicujus, vt ad Ecclesiam præsentet nomine proprio & non alieno. And (p) Fleta lib. 5. cap. 14. agreeth herewith almost totidem verbis: Aduocatus est ad quem pertinet jus aduocationis alterius Ecclesiæ, vt ad Ecclesiam nomine proprio non alieno possit præsentare. And (q) Britton cap. 92. The patron is called Auow, and the patrons are called aduocati, for that they be either Founders, or Maintainers, or Benefactors of the Church either by building, dotation or increasing of it, in which respect they were also called Patroni, and the Aduowson jus patronatus.

(n) W. 2. ca. 5.
(o) Brac. lib. 4. fo. 240.
(p) Fleta lib. 5. cap. 14.
(q) Britton cap. 92.
(r) 33. H. 6. 11. b. per Prisot. 14. H. 6. 15. per Newton. 31. E. 1. droit 68. 69. F. N. B. 31. b. Lib. 10. 135. 136. R. Smithes case. 45. E. 3. Fines 41. 45. E. 3. 12. 17. E. 3. 78. 17. E. 2. Dower 163.
Lib. 4. 75. b. V. 2 And. 23. V. 3 Fitz. 321.

And it is to be vnderstood that there is a great (r) diuersitie inter aduocationem medietatis Ecclesiæ, &c. & medietatem aduocationis Ecclesiæ, and of their seuerall remedies for the same. For the Aduowson of the moitie is when there be seuerall patrons, and two seuerall incumbents in one Church, the one of the one moitie thereof, and the other of the other moitie, & one

part

part aswell of the Church as of the Towne allotted to the one, and the other part thereof to the other, and in that case each Patron if he be disturbed shall haue a Quare impedit, quod permittat ipsum præsentare idoneam personam ad medietatem Ecclesiæ.

But if there be two Coparceners, and they doe agree to present by turne, each of them in truth hath but a moitie of the Church, but for that there is but one incumbent, if either of them be disturbed she shall haue a Quare impedit, &c. præsentare idoneam personam ad Ecclesiam; for that there is but one Church and one incumbent. and so of the like. But in (f) the said case of two Coparceners one of them shall haue a writ of right of Aduowson de medietate aduocationis, for in truth she hath but a right to a moitie, but in the other case where there be two Patrons and two Incumbents in one Church, each of them shall haue a writ of right of Aduowson De aduocatione medietatis.

And as there may (as hath beene said) be two seuerall Parsons in one Church, so there may be two that may make but one Parson in a Church. (t) Britton saith, Si aucun Eglise soit done a diuers persons per vn sole auowe nul ne se pura pleadre per assise de juris vtrum ne nul estre impledе sauns lautre, &c. And therewith agreeth Fleta. (u) Item licet aliqua Ecclesia diuisa fuerit inter duos, siue bona sua habeant communia siue separata, dum tamen vnicum habeant aduocatum nullus eorum sine alio agere poterit vel implacitari. And Fitzh. saith, that two Prebendaries may be one Parson of a Church, who shall ioyne in a Iuris vtrum, so as one Rectorie may bee annexed to two seuerall Prebends, and both of them make but one Parson. But where one is Parson of the one moitie of a Church & another of the other moitie as hath beene said, there one of them shall haue a Iuris vtrum against the other, and in the Writ shall name him persona medietatis Ecclesiæ, &c. But for auoyding of suspition of curtosie if wee should proceed any further herein, we will attend what Littleton will further teach vs.

Lib. 10. 176. a. v. Ny. 78. b. 299. Lib. 2. 102.

(f) Britton fol. 235. 31. E. 1. droit. 68. 69. F.N.B. 31. b. c. 33. a. 5. H. 7. 8. 17. E. 3. 38. 75. 76. 7. E. 3. 327. 8. E. 3. 425. 22. Ass p. 31. 14. H 4. 16. 33. E. 3. Quar. imp. 196.

(t) Britton fo. 235.

(u) Fleta lib. 5. ca. 19.

F. N. B. 49. o.

F. N. B. 49. p.

Sect. 11.

¶ Et nota que homē ne poit aū pluis ample ou pluis griender estate de heritance, que fée simple.

And note that a man cannot haue a more large or greater estate of inheritance than Fee simple.

¶ This doth extend as well to Fee simples conditionall & qualified, as to Fee simples pure & absolute. For our Author speaketh here of the ampleneſſe and greatneſſe of the eſtate, and not of the perdurableneſſe of the ſame. And he that hath a Fee ſimple conditionall or qualified, hath as ample and great an eſtate as he that hath a Fee ſimple abſolute, ſo as the diuerſitie appeareth betweene the quantitie & qualitie of the eſtate.

From this ſtate in Fee ſimple, eſtates in taile, and all other particular eſtates are deriued, and therefore worthily our Author beginneth his firſt booke with Tenant in Fee ſimple, for à principalioribus ſeu dignioribus eſt inchoandum.

¶ *Ne poet auer pluis ample ou griender estate, &c.* For this cauſe two (a) Fee ſimples abſolute cannot be of one and the ſelfe ſame land. If the King make a gift in taile, & the Donee is attainted of treaſon, in this caſe the King hath not two Fee ſimples in him, viz. the ancient reuerſion in Fee, and a Fee ſimple determinable vpon the dying without iſſue of Tenant in taile, but both of them are conſolidated and conioyned together, and ſo it is if ſuch a Tenant in taile doth conuey the land to the King his heires and ſucceſſors, the King hath but one eſtate in Fee ſimple vnited in him, and the Kings grant of one eſtate is good, and ſo was it adiudged in the Court of Common Pleas. And yet in ſeuerall perſons by act in Law, a reuerſion may be in Fee ſimple in one, and a Fee ſimple determinable in another by matter Ex poſt facto; as if a gift in taile be made to a Villeine, and the Lord enter, the Lord hath a Fee ſimple qualified, and the Donor a reuerſion in fee, but if the Lord infeoffe the Donor, now both Fee ſimples are vnited, and he hath but one Fee ſimple in him: but one Fee ſimple cannot depend vpon another by the grant of the partie, as if lands be giuen to A. ſo long as B. hath heires of his body the remainder ouer in fee, the remainder is voyd.

(a) Pl. Com. 349. & 348. 19. H. 8. Dier 4. 29. H. 8. Dier 33. 1 fro. 577. yel. 150. 16. Eliz. Dier 330. 2. Marie Dier 107. Auſtens caſe. Pa. 38. Eliz. Rot. 108. 3 fro. 519. Mo 421. In Quar. imp. betweene the Queene Pl. and the Biſhop of Lincolne, Huſſey and others Deff. 15. E. 4. 6. 8. fro. 517. a. Mo. 323.

v. 3 fro. 359. Vrat:

Sect. 12.

¶ Item purchase est appel la possession de terres ou

Also purchaſe is called the poſſeſſion of lands or tene-

¶ Purchaſe in Latin is as much as acquiſitum of the verbe acquiro, for ſo I find it in the originall Regiſter 243. In tertis vel tenementis quæ viri

viri & mulieres coniunctim acquiſiuerunt, &c. Bracton calleth it perquiſitum; & by (b) Glanuill it is called quæſitus or perquiſitum.

tenements que home ad p ſon fait, ou per agréement, a quel poſſeſſion il ne auient per title de diſcent de nul de ſes anceſters, ou de ſes couſins mes per ſon fait demeſne.

ments that a man hath by his deed or agreement, vnto which poſſeſſion hee commeth not by title of deſcent from any of his Anceſtors, or of his Couſins but by his owne deed.

Bracton lib. 2. fol. 65.
(b) Glanuill lib. 7. cap. 1.
Britt. c. 33. fo. 84. & 121.

A purchaſe is alwayes intended by title, and moſt properly by ſome kinde of conueyance either for money or ſome other conſideration, or freely of gift: for that is in Law alſo a purchaſe. But a deſcent, becauſe it commeth meerely by act of Law, is not ſaid to be a purchaſe, and accordingly the makers of the act of Parliament in 1. H. 5. ca. 5. ſpeaketh of them that haue lands or tenements by purchaſe or deſcent of inheritance. And ſo it is of an Eſcheat or the like, becauſe the inheritance is caſt vpon, or a title veſted in the Lord by act in Law and not by his owne deed or agreement as our Author here ſaith. Like Law of the eſtate of Tenant by the courteſie, tenant in dower or the like. But ſuch as attaine to lands by meere iniurie and wrong, as by diſſeiſin, intruſion, abatement, vſurpation, &c. cannot be ſaid to come in by purchaſe, no more than Robberie, Burglarie, Pyracie or the like can iuſtly be termed purchaſe.

Ante 3. b. Pl. Com. Wimbiſhes caſe 47. b. 2. H. 5. ca. 5.

If a Nobleman, Knight, Eſquire, &c. be buried in a Church, and haue his coat armor and Pennions with his armes, and ſuch other enſignes of honour as belong to his degree or order ſet vp in the Church, or if a graueſtone or tombe be laid or made, &c. for a monument of him, (c) In this caſe albeit the freehold of the Church be in the Parſon, and that theſe be annexed to the freehold, yet cannot the Parſon or any take them or deface them, but he is ſubiect to an action to the heire, and his heires in the honour and memorie of whoſe Anceſtor they were ſet vp. And ſo it was holden, Mich. 10. Ia. and herewith agreeth the Lawes (d) in other Countries. Note this kinde of inheritance: and ſome hold that the Wife or Executors that firſt ſet them vp may haue an action in that caſe againſt thoſe that deface them in their time. And note that in ſome places chattels as heire-loomes, (as the beſt bed, table, pot, pan, cart, & other dead chattels moueable) may go to the heire, and the heire in that caſe may haue an action for them at the Common Law, and ſhall not ſue for them in the Eccleſiaſticall Court, but the heire-loome is due by cuſtome & not by the Common Law. And the (e) ancient iewels of the Crowne are heire loomes and ſhall deſcend to the next Succeſſor, and are not deuiſable by teſtament.

Ro. 624. 2 Bro. 367.

(c) 9. E. 4. 24.

Mo. 878.

Mich. 10. Ia. Obiter in Com. Banc. in Pyms caſe.
(d) B. Caſſanæus fol. 13. Conc. 39.
30. E. 3. 2. & 3.
39. E. 3. 6. 9. 10.
2. H. 5. tit. Executors 108. tit. Deſcent. Br. 43.
9. E. 15. Madam Wiches caſe.
(e) Vide 28. H. 8. 24.

In their heire-loome is called principalium or hæreditarium.

Conſuetudo hundredi de Stretford in Com' Oxon eſt quod hæredes tenentorum infra hundredum prædictum exiſten poſt mortem anteceſſorum ſuorum habebunt, &c. principalium, Anglice an heire-loome, viz. De quodam genere catallor, vtenſilium, &c. optimum plauſtrem, optimam carucam, optimum ciphum, &c.

Int. adjudicata coram Rege Tr. 41. E. 3. lib. 2. fol. 104. in Theſaur. Britt. 242. 242. &c.

Our Author hath not ſpoken of parceners in this Chapter, for that hee hath particular Chapters of the ſame.

Gradus Parentelæ, &c.

Chap. 2. Sect. 13.

Miror cap. 2. ſect. 15. & cap. 2. ſect. 5.

Tenant en Fee taile. Tallium, or Feodum talliatũ, is deriued of the French word tailler, ſcindere, for ſo Littleton himſelfe in this Chapter Sect. 18. ſaith.

Tenant in fee taile eſt p force de le ſtatute de Weſt. 2. cap. 1. car deuant l' dit ſtatute, touts enheritãces fuer fee ſimple; car touts les dones q̃ ſont ſpecifies deins

Tenant in Fee Taile is by force of the Statute of *W.* 2. *cap.* 1. for before the ſaid Statute, all inheritances were Fee ſimple, for all the gifts which bee ſpecified in that ſtatute were fee ſimple

Adgnati quæ a
Patre cognoti.

247.a.

36.

Gradus Parentelæ & Conſanguinitatis, pro meliori intelligentia Authoris noſtri.

The degrees of Parentage and of Conſanguinitie for the better vnderſtanding of our Authour.

Approued by
Bracton, lib.2. cap.31. fol. 67.
Britton, cap.89. fol.220.221.
Fleta, lib.5. cap.7.
Mirror cap.1. §.3. & que heritages.

Adgnati quaſi a Patre congnati.

Adgnati ex parte Patris.
Couſins on the part of the Father the more worthy in Diſcents, though farther remote.

Linea tranſuerſalis ſeu collateralis.
The ſide Line.

Abpatruus magnus.
The great Vncles Grand-father on the Fathers ſide.

Abamita magna.
The great Vncles Grand-mother on the Fathers ſide.

Propatruus magnus.
The great Vncles Father on the Fathers ſide.

Proamita magna.
The great Vncles Mother on the Fathers ſide.

Patruus magnus.
The great Vncle on the Fathers ſide.

Amita magna.
The great Aunt on the Fathers ſide.

Auus ab Auo quia patre antiquior.

Patruus quaſi loco patris.

Amita quaſi a me tertia.

Patruus.
The Vncle or Fathers Brother.

Amita.
The Aunt or Fathers Siſter.

Patrueles à Patruo.
Sonnes or Daughters, Couſin Germans on the Fathers ſide.

Amitini ab Amita.
Sonnes or Daughters, Couſin Germans on the Fathers ſide.

Frater quaſi ſere ater.

Soror quaſi ſorte orta diuerſa.
Semi germani fratres quaſi ex eodem patre & ſeperalibus matribus nati.
Filius.
Filia
ἀπὸ τοῦ φιλεῖσθαι, φίλιος ſ. ab amore parentum.

Linea tranſuerſalis, ſeu collateralis.
The ſide Line.

Horum.
Of theſe.
Filius.
The Sonne.
Filia.
The Daughter right Couſin German.

Eorum.
Of theſe.
Nepos collat.
The collaterall Nephew.
Neptis collat.
The collaterall Niece.

Nepos quaſi natus poſt.

Eorundem.
Of theſe.
Pronepos collat.
The collaterall Nephewes Son
Proneptis collat.
The collaterall Nephewes Daughter.
Et ſic in infinitum.

Cognati quaſi ſimul nati ex parte matris.

Cognati ex parte Matris.
Couſins on the part of the Mother the leſſe worthy in Diſcents, though neerer of kinne.

Linea tranſuerſalis ſeu collateralis.
The ſide Line.

Abauunculus magnus.
The great Vncles Grand-father on the Mothers ſide.

Abmatertera magna.
The great Vncles Grand-mother on the Mothers ſide.

Proauunculus magnus.
The great Vncles Father on the Mothers ſide.

Promatertera magna.
The great Vncles Mother on the Mothers ſide.

Auunculus magnus.
The great Vncle on the Mothers ſide.

Matertera magna.
The great Aunt on the Mothers ſide.

Auunculus, quaſi Auus minor.

Matertera quaſi Mater altera.

Auunculus.
The Vncle or Mothers Brother.

Matertera.
The Aunt or Mothers Siſter.

Auunculini ab Auunculo.
Sonnes or Daughters, Couſin Germans on the Mothers ſide.

Materterini à matertera.
Sonnes or Daughters, Couſin Germans on the Mothers ſide.

Vterini quaſi nati ex eodem vtero fratres ex ſeperalibus patribus.

Linea tranſuerſalis, ſeu collateralis.
The ſide Line.

Horum.
Of theſe.
Filius.
The Sonne.
Filia.
The Daughter right Couſin German.

Eorum
Of theſe.
Nepos collat.
The collaterall Nephew.
Neptis collat.
The collaterall Niece.

Eorundem.
Of theſe.
Pronepos collat.
The collaterall Nephewes Son
Proneptis collat.
The collatteral Nephewes Daughter.
Et ſic in infinitum.

Recta Linea. The right Line.

Tritauus. The great Grand-fathers great Grand-father.

Tritauia. The great Grand-fathers great Grand-mother.

5

Attauus. The great Grand-fathers Grand-father.

Attauia. The great Grand-fathers Grand-mother.

4

Abauus. The great Grand-fathers Father.

Abauia. The great Grand-fathers Mother.

3

Proauus. The great Grand-father.

Proauia. The great Grand-mother.

2

Auus. The Grand-father.

Auia. The Grand-mother.

1

Pater. Father.

Mater. Mother.

Linea recta aſcendens.
The right Line aſcending.

Frater a Brother. *Semi germanus frater.* Brother of one Father and ſeuerall Mothers. *Soror.* Siſter.

Frater, a Brother. *vterinus frater.* Brother of one Mother & ſeuerall Fathers. *Soror.* Siſter.

Propo- ſitus.

Linea recta diſcendens.
The right Line diſcending.

1

Filius. Sonne.

Filia. Daughter.

2

Nepos linealis. The lineall Nephew.

Neptis linealis. The lineall Niece.

3

Pronepos linealis. The lineall Nephewes or Neices Son.

Proneptis linealis. The lineal nephewes or neices daughter

4

Abnepos linealis. The grand Sonne of the lineall Nephew or Niece.

Abneptis linealis. The grand Daughter of the lineall Nephew or Niece.

5

Atnepos linealis. The great grand Sonne of the lineall Nephew or Niece.

Atneptis linealis. The great grand Daughter of the lineall Nephew or Neice.

6

Trinepos linealis. The great great grand Sonne of the lineall Nephew or Niece. *Et ſic in infinitum.*

Trineptis linealis. The great great grand Daughter of the lineall Nephew or Niece. *Et ſic in infinitum.*

Place this next before Folio 19.

Ans

Mo. 8;

ñ le ſtat, fuer fee ſimple conditional al cõmon ley, come appiert p le reherſal d ñ le ſtatute. Et ore p cel ſtat tenãt en le taile eſt en deux mañs, ceſtaſcauoir, tenant en taile generall, & tenant en taile ſpecial.

conditionall at the Common Law, as appeareth by the rehearſall of the ſame Statute. And now by this Statute, tenant in taile is in two manners, that is to ſay, Tenant in taile generall, and Tenant in taile ſpeciall.

holden at Weſtminſter, and hath the name of the ſecond, becauſe another Parliament was formerly holden at Weſtminſter in the third yeare of the ſame Kings reigne, which was called Weſtminſter the firſt. And albeit many Parliaments were after holden at Weſtminſter beſides theſe, yet were they two onely, propter excellentiam, called the Statutes of Weſtminſter. And the Act intended by Littleton, is W.1.ca.1.

Vpon which Statute our Author in the Inner Temple did learnedly read, whoſe reading I haue. Of King Ed. 1. and of this Statute, Sir William Herle chiefe Iuſtice of the Court of Common Pleas, in 5. E.3. 14. ſaith, That King E.1. was the wiſeſt King that euer was: and the cauſe of the making of this Statute, was to preſerue the Inheritance in the bloud of them to whom the gift was made, And in 9. E. 3. 22. he ſaith, That they were ſage men that made this Statute. See more of this in the Chapter of Warranties, Sect. 746.

Lib. 10. 38. b.

5. E. 1. 14.

9. E. 3. 22.

Of this eſtate Taile it is ſaid, (a) Modus legem dat donationi, & tenend' eſt etiam conuentio, quia Modus & Conuentio vincunt legem: Vt ſi alicui cum vxore fiat donatio, habendum & tenendum ſibi & hæredibus quos inter eos legitime procreabunt, ecce quod donator vult tales hæredes in hæreditate paterna & materna ſuccedant, aliis hæredibus eorum remotioribus penitus excluſis: Et quod voluntas donatoris obſeruari debet manifeſte apparet per hæc Statuta, quia autem dudum Regi durum videbatur, &c.

(a) Fleta lib. 3. cap. 9. Bract. lib. 2. cap. 5. & cc. Brit. ca. 24. & 36.

¶ *Deuant le dit Statute* (b) *touts Inheritances fueront Fee ſimple.* Here Fee ſimple is taken in his large ſenſe, including as well conditionall or qualified, as abſolute, to diſtinguiſh them from eſtates in Taile ſince the ſaid Statute. Before which Statute of Donis conditionalibus, If land had beene giuen to a man, and to the heires males of his bodie, the hauing of an Iſſue female had beene no performance of the Condition, but if he had iſſue male, and died, and the iſſue male had inherited, yet hee had not had a Fee ſimple abſolute, (c) for if hee had died without iſſue male, the Donor ſhould haue entred as in his reuerter. By hauing of iſſue, the Condition was performed for three purpoſes; Firſt, to alien: Secondly, to forfeit: Thirdly, to charge with Rent, Common, or the like. But the courſe of deſcent was not altered by hauing iſſue: for if the Donee had iſſue and died, and the land had deſcended to his iſſue (d) yet if that iſſue had dyed (without any alienation made) without iſſue, his collaterall heire ſhould not haue inherited, becauſe he was not within the forme of the gift, viz. heire of the bodie of the Donee. (f) Lands were giuen before the Statute in Frankmarriage, and the Donees had iſſue and died, and after, the iſſue died without iſſue, it was adiudged that his collaterall iſſue ſhall not inherit, but the Donor ſhall re-enter. So note, that the heire in Taile had no Fee ſimple abſolute at the Common Law, though there were diuers diſcents.

(b) Vid. Sect. 18. Brit. ca. 36. fol. 93. Pl. Com. 235. 562. Shelleys Caſe lib. 1. fol. 103. Ro. 840. 1.

2 Ins. 333.

(c) 44. E. 3. 3. 38. E. 1. Formedon 66. 2. E. 3. 6. 7. 7. H. 4. 31. 12. H. 4. 2.

2 Ins. 334.

(d) 18. E. 3. 46. 18. Aſſ. p. 3. 12. E. 4. 3. 1 Ro. 140.

(f) 4. H. 3. Formdon 34. 18. Aſſ. 5. 12. E. 4. 3. Pl. Com. 247. b. 18. E. 2. tit. Formdon 58. 59.

If lands had beene giuen to a man and to his heires males of his bodie, and he had iſſue two ſonnes, and the eldeſt had iſſue a daughter, the daughter was not inheritable to the Fee ſimple, but the younger ſon per formam Doni. And ſo if land had beene giuen at the Common Law to a man and the heires Females of his body, and hee had iſſue a ſonne and a daughter, and died, the daughter ſhould haue inherited this Fee ſimple at the Common Law, for the Statute of Donis conditionalibus createth no eſtate taile, but of ſuch an eſtate as was fee ſimple at the Common Law and is deſcendable in ſuch forme as it was at the Common Law. If the Donee in taile had iſſue before the Statute, and the iſſue had dyed without iſſue, the alienation of the Donee at the Common Law, hauing no iſſue at that time had not barred the Donor.

(g) If Donee in taile at the Common Law had alened before any iſſue had, and after had iſſue, this alienation had barred the iſſue, becauſe he claimed a Fee ſimple, yet if that iſſue dyed without iſſue, the Donor might re-enter for that he alened before any iſſue, at what time he had no power to alien to barre the poſſibilitie of the Donor. (h) But if Feme tenant in taile had taken husband, and had iſſue, and the husband and wife had alened in Fee by Deed before the Statute, yet the iſſue might haue had a Formdon in deſcender, for the alienation was not lawfull: but otherwiſe it is, if it had beene by fine. And theſe things though they ſeeme ancient are neceſſarie notwithſtanding to be knowne, aſwell for the knowledge of the Common Law, as for Annuities and ſuch like Inheritances as cannot bee intailed within the ſaid Statute, and therefore remaine at the Common Law. (i) If the King before the Statute of Donis con-

Lib. 11. 72. a. 1 Ro. 840.

(g) 30. E. 1. Formdon 65. Temps E. 1. ibidem 62. 19. E. 2. Formdon 61. Pl. Com. 246.

2 Ins. 336.

(h) 4. E. 2. Formdon 38.

v. Lib. 8. 72. b.

(i) 6. E. 3. 56. Io. of Eltham's caſe.

conditionalibus had made a gift to a man, and to the heires of his bodie begotten, the Donée Post prolem suscitatam, might haue alened aswell as in the case of a common person. (k) But if the Donée had no issue, and before the Statute had alened with Warrantie, and died, and the Warrantie had descended vpon the King, this should not haue bound the King of his Reuersion without assets: but otherwise it was in the case of a common person. (l) Of the other side, if Lands had beene giuen to the King and to the heires of his bodie, hee could not before issue haue alened in Fee, but onely to haue barred his issue as a common person might haue done, but not to haue barred the Reuersion, for that should haue beene a wrong in the case of a Subiect, and the Kings Prerogatiue cannot alter his case, nor make it greater then the Donor gaue vnto him: And it is a Maxime in Law, That the King can doe no wrong. When all Estates were Fee simple, then were purchasers sure of their purchases, Farmors of their leases, Creditors of their debts, the King and Lords had their Escheats, Forfeitures, Wardships, and other profits of their Seigniories: and for these and other like cases, by the wisdome of the Common Law all Estates of inheritance were Fee simple, and what contentions and mischiefes haue crept into the quiet of the Law by these fettered inheritances, daily experience teacheth vs. But see more of this matter in the aforesaid Chapter of Warrantie Sect. 746.

(k) 45. Ass. p. 6. Post 370. b.

(l) Pl. Com. 246. b. Lib. 1. 44. b.

¶ *Commen ley.* See for explication hereof, Sect. 170.

Lib. 10. f. 38. in Port. case.

¶ *Come appiert per le rehersall de mesme lestatute.* Here, by the authoritie of our Author, The rehearsall or preamble of a Statute is to be taken for truth, for it cannot be thought that a Statute that is made by authoritie of the whole Realme, as well of the King, as of the Lords Spirituall and Temporall, and of all the Commons, will recite a thing against the truth.

Dost. & Stud. lib. 2. ca. 55.

¶ *Et ore per cel statute tenant en taile est en 2. Manners,* s. *tenant en taile generall, & tenant en taile especiall.*

This diuision of an estate taile is perfect and sound, For the membra diuidentia, viz. generall and speciall are conuerted properly with the thing defined, and they are proued by many Authorities of Law, and approued of all learned men, and so are all the diuisions thorow all his three Bookes, which the studious and diligent Reader will obserue. And how excellent and difficult a thing it is to diuide rightly and properly, especially in the Law, the learned doe know.

(r) 34. H. 8. tit. Feoffments al. Fines 49. 27. H. 8. 50.

By this Statute the Land is as it were appropriated to the Tenant in taile, and to the heires of his bodie, and therefore (r) if an estate be made, either before or since the Statute of 27. H. 8. cap. 10. to a man and the heires of his bodie, either to the vse of another and his heires, or to the vse of himselfe and his heires, this limitation of vse is vtterly voyd. For before the said Statute of 27. H. 8. he could not haue executed the estate to the vse, and so was it adiudged (s) in an Ejectione firmæ, betweene Iohn Cowper Plaintife, and Thomas Franklin, &c. Defendant.

2 Fro. 100.

(s) Pasch. 14. Ia. in the Kings Bench. Mo. 8. 483 Bulst. 18. 4.

Sect. 14, 15.

Vid. Sect. 1.

¶ *Terres,* Terra, in his generall & legall signification (as hath beene said before) includeth not onely all kinde of grounds, as meadow, pasture, wood, &c. but houses and all edifices whatsoeuer. In a more restrained sense it is taken for arable ground.

V. 2. Ins. 333.

¶ *Tenements,* Tenementa. This is the only word which the said Statute of W. 2. that created Estates taile, vseth, and it includeth not only all Corporate Inheritances, which are or may be holden, but also all Inheritances issuing out of any of

¶ Tenant en taile generall, est lou tres ou tenemts sont dones a vn home & a ses heires de son corps engendres: En ceo case est dit generall taile, pur ceo q̄ quelcunq; feme q̄ tiel tenant espousa (sil auoit plusors femes, & p̄ chescun de eux il ad issue) vncore chescun de les issues

Tenant in taile generall, is where Lands or Tenements are giuen to a man, and to his heires of his bodie begotten. In this case it is said generall taile, because whatsoeuer woman that such tenant taketh to wife (if he hath many wiues and by euerie of them hath issue) yet euerie one of these issues by pos-

per possibilitie poit enheriter les tenements per force del done, pur ceo que chescun tiel issue est de s corps engendre.

possibilitie may inherit the Tenements by force of the gift; because that euerie such issue is of his body ingendred.

¶ En mie maner est lou terres ou tenements sont dones a vn feme, & a les heires de sa corps issuants, coment que el auoit diuers barons, uncore issue que el poet auer per chescun baron, poit enheriter come issue en le taile per force de tiel done, & pur ceo tiels dones sont appelles generall tailes.

IN the same manner it is where lands and Tenements are giuen to a woman, and to the heires of her body; albeit that she hath diuers husbands; yet the issue which shee may haue by euery Husband may inherit as issue in taile by force of this gift. And therefore such gifts are called generall tailes.

those inheritances, or concerning, or annexed to, or exercisible within the same, though they lye not in tenure, therefore all these without question may be intailed. As (t) Rents, Estouers, Commons or other profits whatsoeuer granted out of land; Or Vses, Offices, Dignities which concerne Lands or certaine places may be entailed within the said Statute, because all these sauour of the Realtie. But if the grant be of an Inheritance meere personal, or to be exercised about Chattels, and is not issuing out of land, nor concerning any land, or some certaine place, such inheritances cannot be entailed, because they sauour nothing of the realtie. But examples will illustrate and make this learning clere.

(t) 7.E.3.363. 18.E.3.27. 7.H.6.8. 32.H.8. 5.E.4. 3.1.H.7.28. 4.H.7.9. 1.H.5. 1.H.8.fol. 1. Neuils case, lib.fol. 33.34. Pl.Com. in Manxels case, fol. 2.& 3.

1 Ro. 837.

The Writ of Assise (u) was De libero tenemento, and made his plaint of the Office of the fourth part of the Seriant of the Common Place, and the Writ adiudged good, and seeing that a man hath a Freehold, Liberum tenementum in it, by consequent it may be intailed.

(u) 7.Ass.p.12. 7.E.6.1.

18.E.3.27. 1 R. 838.

The Office of the keeping of the Church of our Lady of Lincolne, was entailed, and a Formedon there brought vpon that gift of the Office by the issue in taile. The (x) Office of the Marshall of England entailed. The (y) Office of one of the Chamberlaines of the Exchequer intailed. 1.H.7.28. The Office of a Fostership intailed. 4.H.7.10. 9 E.4.56.b. Charters intailed. 19 H.8.3. Vse intailed. (z) Nomination to a Benefice intailed.

(x) 5.E.4.3. 10.E.4.14.
(y) 11.E.4.1. 1.H.7.28. 4.H.7.10. 9.E.4.528. 19.H.8.3. 1.H.5.1.

Also a name of dignitie may be intailed within the Statute, (a) as Dukes, Marquesses, Earles, Viscounts, and Barons, because they be named of some Countie, Mannor, Towne, or Place. If the issue in taile (b) in a Formedon in the Discender be barred by a false verdict, his release is no barre to his issue, albeit the action is at the Common Law.

(a) Lib.7.fol.33.34. Neuils case. 1 Ro. 837. 28.H.6. Lord Vescyes case.
(b) 14.Ass.2. 3.Eliz. Dyer 188.

The like Law is of a Writ of Errour, 3. Eliz. Dyer 188. If a gift in taile bee made with Warrantie, the Donee releases the Warrantie, this shall not binde the issue in taile, for to all these cases and the like the said Statute doth extend. But if I grant to a man, & to the heires of his body to be Keeper of my Hounds, or Master of my Horse, or to be my Faulconer, or such like with a fee therefore, yet these cannot be intailed within the said Statute, for that they bee not issuing out of Tenements nor annexed to, or exercisible within, or concerning Lands or Tenements of Freehold or Inheritance, but concerning Chattels, and sauour nothing of the Realtie. And so it is if I by my deed for me and my heires grant an annuitie to a man, and the heires of his body, for that this only chargeth my person and concerneth no Land, nor sauoureth of the Realtie.

Pl.Com. in Manxels case.

1 Ro. 837.

In all these cases hee hath a fee conditionall, as they were before the Statute. and the Grantee by his grant or release may barre his heire, as he might haue done at the Common Law, for that in these cases he is not restrained by the said Statute.

¶. *Et a ses heirs de son corps engendres.* In gifts in taile these words (heires) are as necessarie, as in Feoffments and Grants; for seeing euerie estate taile was a Fee simple at the Common Law, and at the Common Law no Fee simple could be in Feoffments and Grants without these words (heires) and that an estate in Fee taile is but a cut or restrained Fee, It followeth that in gifts in a mans life time, no Estate can bee created without these words (heires) vnlesse it bee in case of Frankmarriage, as hereafter shall bee shewed. And where Littleton saith (heires) yet (heire) in the singular number in a speciall

2 Rol. 334.

21. 6. 9

39.Ass.p.20. 1 Ro.838. 20.H.6.35. 5.H 4.7.b. 14.H.4.15. V.3 Co.101. V.Hy. 15.b. Post 385.b. V.Mo.696. Yel.193 ante 9.b. aliter K devise 9:b† Mo.393. Lil.b.166.

case may create an Estate taile, as it appeareth by 39. Ass.p. 20. hereafter mentioned. And yet if a man giue lands to A. & hæredibus de corpore suo, the remainder to B. in forma prædicta, this is a good Estate taile to B. for that in forma prædicta doe include the other. If a man letteth lands to A. for life, the remainder to B. in taile, the remainder to C. in forma prædicta, this remainder is void for the incertaintie. But if the remainder had beene, the remainder to C. in eadem forma, this had beene a good Estate taile, for Idem semper proximo antecedenti refertur.

Vid.Shelleys case, lib.1.f.

If a man giue lands or tenements to a man & semini suo, or exitibus vel prolibus de corpore suo, to a man and to his Seed, or to the Issues or Children of his body, he hath but an estate for life, for albeit that the Statute prouideth that Voluntas Donatoris secundum formam in charta doni sui manifestè expressam de cætero obseruetur, Yet that will and intent must agree with the rules of Law. And of this opinion was our Author himselfe, as it appeared in his learned reading aforementioned upon this Statute: Where hee holdeth if a man giueth land to a man Ex exitibus de corpore suo legitime procreatis, or semini suo, hee hath but an estate for life, for that there wanteth words of Inheritance.

¶ *De son corps.* These words are not so strictly required, but that they may bee expressed by words that amount to as much: for the example that the statute of W.2. putteth hath not these words (de corpore suo) but these words (hæredibus) viz. Cum aliquis dat terram suam alicui viro & eius vxori & hæredibus de ipsis viro & muliere procreatis. If lands be giuen (c) to B. & hæredibus quos idem B. de prima vxore sua legitimè procrearet. This is a good estate in especiall taile (albeit he hath no wife at that time) without these words (de corpore.) So it is (d) if lands be giuen to a man, and to his heires which he shall beget of his wife: (e) or to a man & hæredibus de carne suâ, or to a (f) man & hæredibus de se. In all these cases these be good estates in taile, and yet these words de corpore are omitted.

(c) 3.E.3.tit. breue. 743. 3.E.3.tit. Estates. Lib.Y.42.a. (d) 12.H.4.2. (e) 27.H.6.15. (f) 5.H.5.6. fin:b 42ª 10 imply Mo.6.11.

It is holden (g) by some opinion, that if there be grandfather, father and sonne, and lands are giuen to the grandfather, and to his heires begotten by the father, the father dyeth, the grandfather dieth, the sonne is in as heire to the grandfather begotten vpon the body of his father, and the wife of the grandfather in that case shall be endowed. But certaine it is, that in some cases one shall haue the land per formam doni that is not issue of the body of the Donee, which see Sect.30.

(g) 12.H.4.2.per Horton.

¶ *Engendres.* This word may in many cases bee omitted or expressed by the like, and yet the state in taile is good: as, Hæredibus de carne, hæredibus de se, hæred' quos sibi contigerit, &c. as is aforesaid, and where the word of Littleton is, ingendred, or begotten, procreatis, yet if the word be procreandis or quos procreauerit, the estate in taile is good; and as procreatis shall extend to the issues begotten afterwards, so procreandis shall extend to the issues begotten before.

18.E.2. tit.Bre.836. 24.E.3.28.

3 Leo. 87.

Sect. 16.

(a) 5.H.7.10.11.E.3. Formdon 30.Pl.Com.35.

¶ *Vn home & sa feme.* (a) Then put the case that lands be giuen to a man and a woman vnmarried, and the heires of their two bodies: for the apparant possibilitie to marrie, they haue an estate taile in them presently. (b) So it is where lands be giuen to the husband of A. and to the wife of B. and to the heires of their bodies, they haue presently an estate in taile, in respect of the possibilitie. If a feme sole doe enfeoffe a married man causa matrimonii prælocuti, it is good for the possibilitie. But put the case that the premises and the habendum bee in other manner than Littleton hath put, and let vs see

(b) Lib.1.fo.120. Chudleys case,40.Ass.pl.13.34. Ass.pl.1.Fleta lib.5.c.34. Ro.761. post 8.b.

TEnant en taile especiall ẽ lour fees ou Tenements sont dones a vn home & a sa feme, & a les heires de lour deux corps engendres, en tiel case nul poet inherit p force de le dit done, forsq̃ ceux q̃ sont ingendres perentr̃ eux deux. Et ceo appel le especiall Taile, pur ceo q̃ si la feme deuy, & il prent auk̃ feme, & ad issue, issue del se-

TEnant in taile especiall is where Lands or Tenements are giuen to a man and to his wife, and to the heires of their two bodies begotten; In this case none shall inherit by force of this gift, but those that bee engendred between them two. And it is called especiall taile, because if the wife die, and hee taketh another wife, and haue issue, the is-

cond

cond feme ne serra iammes inheritable p̄ force de tiel done, ne aury issue del second baron, si le p̄mier Baron deuie.

sue of the second wife shall not inherit by force of this gift, nor also the issue of the second husband, if the first husband die.

what the Law is in these cases. (c) As if a man in the premisses giue lands to another and the heires of his bodie, habendum to him and his heires for euer, It hath beene holden that in this case hee hath an estate taile, and a fee simple expectant: And so (it is said) via versa, if lands be giuen to a man and to his heires in the premisses, habendum to him & to the heires of his body, that he hath an estate taile, and a fee simple expectant. * But vid. lib. 8. fol. 154. b. otherwise resolued, vt patet ibi. (d) If lands be giuen to B. and his heires, to haue & to hold to B. and his heires, if B. haue heires of his body, and if he die without heires of his body that it shall reuert to the Donor, this is adiudged an estate taile, and the reuersion in the Donor. (e) For, Voluntas donatoris in charta doni sui manifestè expressa obseruetur; and therefore in the case next precedent, if these or the like words be added (and if he die without heires of his body, that the lands shall reuert to the Donor) that then the Habendum shall by authoritie of diuers Bookes bee construed vpon the whole deed, to be a limitation or a declaration, what heires are meant in the premisses, to inherit, and that in that case the reuersion is in the Donor.

(f) If a man make a Charter of feoffment of an acre of land to A. and his heires, and another deed of the same acre to A. and the heires of his body, and deliuer seisin according to the forme and effect of both deeds, in this case he cannot take a Fee simple onely, as some hold, for that inuerie was made according to the deed in taile, as well as to the Charter in fee, neither can the inuerie enure only to the deed of estate taile with a Fee simple expectant, for that inuerie was made as well vpon the deed in fee simple, as the deed in taile. Therefore others hold, That in that case it shall enure by moyties, that is, to haue an estate taile in the one moytie, with the Fee simple expectant, and a Fee simple in the other moytie: And so the inuerie shall worke immediately vpon both deeds.

(c) 21.H.6.7. Lib.8.154.b. 2.Dy.171. 7.Hol.132. P.R.168. 2 Bro. 476.

* vide H.8.12. 2 Ro.68. Dy.126.b. Harman & Coggs case Pas: 16. Ja: B.R. the Iudges denied that resolution to be law.

(d) 30.Ass.p.47. 2 Ro.66.68. 35.Ass.p.14. 37.Ass.15. 5.H.5.6.

(e) W.2.ca.21.

(f) 2.H.6.25. 45.E.3.20.

Sect. 17.

CEn meisme le manēr est lou tenements sont dones per vn home a vn auter oue vn Feme, que est la file ou cousin al Donour en Frankmarriage, le quel done ad vn enheritance per ceux parolx (frankmarriage) a ceo annexe, coment que ne soit expresse ment dit, ou reherce in le done, ceo est a sauoir, que les Donees aueront les tenemēts a eux & a lour heires perenter eux deux engendres. Et ceo est dit especial taile, pur ceo que issue del se-

CIN the same manner it is, where tenements are giuen by one man to another, with a wife (which is the daughter or cousin to the giuer) in frankmarriage, the which gift hath an enheritance by these words (Frankmarriage) annexed vnto it, although it bee not expressly said or rehearsed in the gift (that is to say) that the Donees shall haue the tenements to them and to their heires betweene them two begotten. And this is called especiall taile, because

CA vnhōe oue vn feme. Albeit the gift is made of the land to the man with his daughter, &c. yet is the gift good to them both in speciall taile, and therefore that of Stephan de la More in (g) 5.E.3. is verie remarkable, where the case was, that Robert gaue the reuersion of lands which Agnes his wife did hold for her life to Stephan de la More, Habendum post mortem dictæ Agnetis in liberum maritagium cum Iohanna filia ejusdem Roberti, and it is adiudged that it is a good estate taile: wherein three things are to be obserued; First, that Ioane the daughter took with her husband an estate in especiall taile, albeit she were named but vnder a cum, viz, cum Iohanna, &c. 2. That that cum doth come after the Habendum, for that it is but all one sentence, 3. That these words, in liberum maritagiū, doe create an estate of inheritance in especiall taile as Littleton

Pl.236.b. Dy.272.b. Vid. Sect. 19. 23.

5.E.3.17.

(g) This case is vouched 2 Bro.434. in Pl. Com. 158. to be in 4.E.3. which being not found in that yeare it is there so left without any further reference, but you shall finde it as aboue said in 5.E.3.17. 2 Ro.334. Dy.126.a.

1 Ro.841.

cond feme ne poit inheriter. &c.

the Issue of the second wife may not inherit.

tleton saith, Le Donee ad vn inheritance per reason de ceux parolx (frankmarriage) a ceo annexe, coment que ne soit expresse̅ment dit, &c. But this had need of some interpretation, for if lands be giuen by these words (in frankmarriage) according to the rules of Law, then doe these words create an estate of inheritance in speciall taile: for the consideration of marriage is in that case more fauoured in Law than any other consideration: But though the gift be in these words, yet if it be not consonant to the rules of Law in other things requisite thereunto, there they create but an estate for life. And therefore to speake once for all, Foure things be incident to a frankmarriage. First, that it be giuen for consideration of marriage either to a man with a woman, or, as some haue held, to a woman with a man: For in (h) 6. E. 3. 33. in Peirs de Saltmarsh his case, a man gaue land to his sonne in Frankmarriage, and Fitz. N. B. 172. taketh the Law so also. And 7. E. 4. 12. per Moyle against a new opinion in temps H. 8. Br. tit. Frankmarriage the former bookes being not remembred. Secondly, that the woman or man, that is the cause of the gift (i) be of the bloud of the Donor, but it may bee made aswell after marriage as before, and it may be made with a widdow, &c. Thirdly, if the gift be made of such a thing as lyeth in tenure, that the Donees hold of the Donor at the time of the estate in frankmarriage made. A rent seruice (k) may be giuen in Frankmarriage because it may be holden. And so may a Rent charge or Rent secke as Fitz. N. B. holdeth, and it appeareth in our bookes that a Common was granted in Frankmarriage. Fourthly, that the Donees shall hold freely of the Donor till the fourth degree be past. And therefore if land be giuen to a woman, with a son of the Donor in Frankmarriage, there passeth an inheritance, but if the Donee that is the cause of the gift be not of the bloud of the Donor, then there passeth but an estate for life if liuerie be made. Also if (l) lands be giuen to a man with a woman of the bloud of the Donor in liberum maritagium, the remainder in fee either to a stranger or to the Donees, they haue no estate taile, because there is no tenure of the Donor, but if (m) in that case, the remainder had beene limited to another in taile, reseruing the reuersion in fee to the Donor, there the said words (in liberum maritagium) create an inheritance, because the Donees hold of the Donor. And this is the cause that it is holden, That a man cannot deuise land in Frankmarriage because the Donee cannot hold of the Donor. And Cesty que vse before the statute of 27. H. 8. could not haue made a gift in Frankmarriage, because the reuersion was in the Feoffees. (n) And if the Donor doth giue lands in liberum maritagium reseruing a rent, this reseruation shall take no effect till the fourth degree be past, but the Frankmarriage is good, for if the reseruation should be good, then could not the Donees haue an Estate taile for want of words of the heires of their bodies.

W. 2. c. 1.
19. E. 3. tit. taile 1.

(h) 6. E. 3. 33. Fitz. N. B. 172.
7. E. 4. 12.
15. E. 2. Cui in vita. Sect. 24.

(i) 4. E. 3. 8.
31. E. 1. taile 30.
Bracton lib. 2. cap. 7.

(k) 22 R. 2. tit. discent. 50.
Fitz. N. B. 212.
9. H. 6. 35. b.
W. 2. cap. 1. acc.

(l) Temps H. 8. Br. frankmar. 11. 13. E. 1. Formdon 63. Mo. 643.
Vid. 32. E. 1. taile 25.
2. E. 2. Feoffment & faits. 9.
17. E. 3. 5. 2. 45. E. 3. 20.

(m) 20. E. 2. aid 174.
31. E. 3. Gard. 216.

(n) Bract. lib. 2. cap. 7.
32. E. 1. taile 31. Mo. 840.
13. H. 4. 7. 4 H. 6. 17.
26. Ass. 06. 31. E. 3. gar. 39.

En Frankmarriage. Liberum maritagium, Frée marriage, Maritagium is taken for Fee taile, and diuideth maritagium into liberum & seruitio obligatum: and herewith agreeth Bracton (o) lib. 2. cap. 34. & 39. Maritagium est aut liberum aut seruitio obligatum, & lib. 2. cap. 7. num. 3. & 4. Liberum maritagium dicitur, vbi Donator vult quod terra sic data quieta sit & libera ab omni seculari seruitio. And so, before Bracton, said Glanuill, lib. 7 cap. 18. Maritagium autem aliud nominatur liberum aliud seruitio obnoxium; liberum dicitur maritagium quando aliquis liber homo aliquam partem terræ suæ dat cum aliqua muliere in maritagium, ita quod ab omni seruitio terra illa sit quieta, &c. And after both of them, Fleta that followeth them both, lib. 3. cap. 1. saith, Est autem quoddam maritagium liberum ab omni seruitio solutum donatori vel ejus hæredi, &c. Et est similiter maritagium seruitio obligatum & oneratum, &c. And these words (in liberum maritagium) are such words of art, and so necessarily required, as they cannot bee expressed by words equipollent, or amounting to as much. As if a man giue lands to a man with his daughter in connubio soluto ab omni seruitio, &c. Yet there passeth in this case but an estate for life, for seeing that these words (in liberum maritagium) create an estate of inheritance against the generall rule of Law, the Law requireth that they should be legally pursued. But then it may be demanded if a man had giuen lands at the Common Law, in libero maritagio, whether had the Donees a fee simple without these words (heires) for that it appeareth by that which hath beene said before, that all gifts in taile were fee simple at the Common Law, and that the statute of W. 2. did not create any estate in Fee taile, but out of an estate in Fee simple. To this it is answered that these words (in liberum maritagium) did create an estate in fee simple at the Common Law: and it is holden in 31. E. 3. gard. 116. Per ceux parolx in frankmarriage les donees aueront les terres a eux & a lour heires parenter eux engendres, & ceo est dit especial taile. But yet betweene Donees in Frankmarriage and other Donees in speciall taile there bee many notable diuersities. If the King giue land to a man and a woman, and the heires of their two bodies, and the woman dye without issue, yet shall the man be tenant in taile apres possibilitie. But if the King giue land to a man with a woman of his kinred in a frankmarriage, and the woman dieth without issue, the man in the Kings case shal not hold it for his life, because the woman was the cause of the gift, but otherwise

(o) Bract. lib. 2. ca. 34. & 39. & lib. 2. ca. 7. nu. 3. & 4.
Glanuill, lib. 7. ca. 1. & ca. 18.

Fleta lib. 3. ca. 1.

30. E. 1. tit. Formdon. 66. adiudg. acc.

31. E. 3. tit. Gard. 116.
Mirr. cap. 2. sect. 15. acc.

9. H. 3. Dower, 202.

wise it is in the case of a common person, If lands be giuen to a man and a woman in especiall taile and they are diuorced causa præcontractus, both shall hold the lands for their lines, But in (p) case of frankmarriage if they be so diuorced, the woman shall enioy the whole land, because she was the cause of the gift. If lands holden in Socage (q) be giuen in especiall taile and the Donees die the issue being within the age of 14. yeares, (r) the next of kinne of the part of the father or of the part of the mother which can hap the custody shall haue it, but in case of Frankmarriage the heire of the part of the mother shall haue it, because as it hath beene said she was the cause of the gift.

7.H.4.16.

(p) 13.E.3.tit.Ass.1. 446
19.E.3.Ass.83. PK. 238.
12.Ass.22.
19.Ass.2.
8.E. Ass.45. Tr. 88.a
(q) Pl.Com.Carils case. 296.b.
(r) 17.H.3.tit.Gard.146.
27.E.3.79.

Sect. 18.

¶ ET nota, quod hoc verbū (Talliare) idem est quod ad quandā certitudinem ponere, vel ad quoddam certum hæreditamentum limitare. Et p̄ c̄ q̄ ē limit & mis en certaine, quel issue enheritera per force de tiels dones, & come longement lenheritance endurera, il est appell ē Latin, feodū talliatū, i. hæreditas in quandam certitudinem limitata, Car si tenant in general taile morust sans issue, l'Donor ou ses heires poient entrer cōe en lour reuersion.

AND note that this word (*Talliare*) is the same as, to set to some certaintie, or to limit to some certaine inheritance. And for that it is limited and put in certaine, what issue shall inherit by force of such gifts, and how long the enheritance shall endure, it is called in Latine, *Feodum talliatum, i. hæreditas in quandam certitudinem limitata.* For if tenant in generall taile dieth without issue, the Donor or his heires may enter as in their reuersion.

¶ *ET nota.* This, in our Author throughout his three bookes, betokens some notable point of instruction worthy of more especiall obseruation, which is often (f) vsed by him, as you may perceiue by the Sections noted in the margent.

(f) Sect.18.37.42.43.49. 50.64.72.89.90.104. 108.114 116.147.158. 161.168.170.183.154. 279.346.387.452.467. 618.619.637.642.670. 682.684.711.717.719. 738.

¶ *Feodum talliatum i. hæreditas in quandam certitudinem limitata.* Here our Author doth interpret what Feodum talliatum is. Of all the estates taile most coarcted or restrained that I finde in our bookes, is the estate taile in 39.Ass.Pl.20. where lands were giuen to a man and to his wife, and to one heire of their bodies lawfully begotten, & to one heire of the body of that heire only. This case being adiudged in the point is an exception (some say) out of the generall rule put before by Littleton, Sect. 13. that all estates tailes were Fee simple at the Common Law, for (say they) by this limitation (hæredi) in the singular number the Donees had not had a Fee simple at the Common Law. Vide registrum judiciale, fol. 6. a gift made to a man & hæredi masculo de corpore suo.

West.2.cap.3.
Pl.Com.251.a.
39.Ass.pl.20.
3 Ro. 453. Tr. 171.
Sect. 13.
Vid.Pl.Com.fo.29.bi
Regist.Iudic.fo.6.

Sect. 19.

¶ EN meſn̄ l'maner est del tenant en special taile, &c. Car en chescun done en le taile sauns pluis ouster dire, le reuersion del Fee simple est en le donor. Et les donées &

IN the same manner it is of the tenant in especiall taile, &c. For in euerie gift in taile without more saying, the reuersion of the fee simple is in the donor. And the donees and

¶ *EN chescun done en taile sans pluis ouster dire, le reuersion del fee simple est en le donor.* This is wrought by the construction of the Stat. of W. 2. cap. 1. which hath turned the Fee simple of the Donee into a particular estate of inheritance, & the possibilitie of the Donor to a reuersion in him expectant vpon the estate taile, &

so as there be two inheritances of one land, yet this was doubted in our Bookes (t) & there resolued according to Littleton. But I see no cause wherefore that point should be drawen in question, for at the same Session of Parliament (in which the Statute de donis conditionalibus was made) viz. ca. 3. it is expressely said, vel per donum in quo reseruatur reuersio, so as by the iudgement of the same Parliament a reuersion was setled in the Donor.

(t) 12.Ed.3.23. 5.H.7.14. West.2.ca.13.Pl.Com. 247.248 251.562 2.E.2. tit. receit. 147. 33.H.6.27. 39.E.3.18. 45.E.3.20.

¶ *Le reuersion del fee simple est en le donor.* A reuersion is where the residue of the estate alwayes doth continue in him that made the particular estate, or where the particular estate is derived out of his estate, as here in the case of Litt. Tenant in Fee simple, maketh gift in taile, so it is of a lease for life, or for yeares. If a man extend lands by force of a Statute Marchant, Staple, Recognizance or Elegit, he leaueth a reuersion in the Conusor. But since Littleton wrote, the description must be more large vpon the Statute of (a) 27.H.8. for at this day, if a man seised of lands in fee make a feoffment in fee, (and depart with his whole estate) and limit the vse to his daughter for life, and after her decease, to the vse of his sonne, in taile, and after to the vse of the right heires of the Feoffor: In this case, albeit he departed with the whole fee simple by the feoffment and limited no vse to himselfe, yet hath he a reuersion, (b) for whensoeuer the Ancestor takes an estate for life, and after a limitation is made to his right heires, the right heires shall not be purchasors. And here in this case when the limitation is to his right heires, and right heire he cannot haue during his life (for, non est hæres viuentis) the Law doth create an vse in him during his life, vntill the future vse commeth in esse, and consequently the right heires cannot be purchasors, and no diuersitie when the Law creates the estate for life, and when the partie. And all this was adiudged betweene (c) Fenwicke and Mitford in the Kings Bench, and if the limitation had beene to the vse of himselfe for life, and after to the vse of another in taile, and after to the vse of his owne right heires, the reuersion of the fee had beene in him, because the vse of the fee continued euer in him: and the Statute doth execute the possession to the vse in the same plight, qualitie, and degree, as the vse was limited.

(a) 27.H.8.ca.10. V.Ny.99.a.b. V.Ny.134.a. V.Ny.9.a.

(b) 38.E.3.26. 27.E.3. age 118. 24.E.3.36. 40.E.3. Ass.319.b. Ny.163.a. Contra. Lib.1.104.a. 1 Rob. 27 1 And. 288. 36 Eliz. 321.

(c) Tr.31.Eliz.inter Fenwicke & Mitford. Hob.291.b. 32.H.8.gard.93. 28.H.8.Dier 8.9.10.&c. Buckenhams case. Hob.288. 5.Marie, Dier 163.134.a.

Mo.285. Ho.27.30.

(d) If a man make a gift in taile, or a lease for life, the remainder to his owne right heires, this remainder is void, & he hath the reuersion in him, for the Ancestor during his life, beareth in his body (in iudgement of Law) all his heires, and therefore it is truly said, that Hæres est pars antecessoris. And this appeareth in a common case, that if land be giuen to a man and his heires, all his heires are so totally in him, as he may giue the lands to whom he will.

(d) 1.H.5.8. 4.H.6.20. 9.Eliz. Dier. Bromleyes case. Ny.237.b.310.a. 325.b.v.2 Bro.24.

(e) So it is if a man be seised of lands in fee, and by indenture make a lease for life, the remainder to the heires male of his owne body, this is a void remainder: for the Donor cannot make his owne right heire a purchaser of an estate taile without departing of the whole Fee simple out of him: as if a man make a feoffment in fee to the vse of himselfe for life, and then to the vse of the heires males of his body, this is a good estate taile executed in himselfe, and the limitation is good by way of vse, because it is raised out of the state of the Feoffees, which the Feoffor departed with, and that is apparant, for a limitation of vse to himselfe had without question beene good.

(e) Dier, 5.Marie 156. Grosvvolds case adiudge. Bendlowes Seriant in his Report agreeth. Ho.30.

(f) If a man make a feoffment in fee to the vse of himselfe in taile, & after to the vse of the Feoffee in fee, the Feoffee hath no reuersion, but in nature of a remainder, albeit the Feoffor haue the estate taile executed in him by the Statute, and the Feoffee is in by the Common Law, which is worthy of obseruation.

(f) 20.Eliz.Dier. 226.19.

To

To conclude this point (g) whosoeuer is seised of land, hath not only the Estate of the land in him, but the right to take profits which is in nature of the vse, and therefore when hee makes a feoffment in Fee without valuable consideration to diuers particular vses, so much of the vse, as he disposeth not, is in him as his ancient vse in point of reuerter. As if a man be seised of two Acres, the one holden by Knights seruice, by priority, and the other by Knights seruice holden by posteriority, & maketh a feoffment in fee of both Acres to the vse of himselfe and his heires, the old vse continued in him, & the priority and posteriority remaine. So it is of lands of part of the mother, the vse shall goe to the heire of the part of the mother, which could not be, if it were not the old vse, but a thing newly created: the like law of lands, of the custome of Borough english, Gauelkind, &c.

(g) 11.H.7.6. 28.H.8.Dier 12.

Hob.27.Co.1.102.b.

¶ *Les dones, & lour issues ferront al donor & a ses heires auriels seruices come le donor fait a son Seignior procheine a luy paramount.* The reason of this is, that when by construction of the said Statute, there was a reuersion seised in the Donor for that the Donee had an Estate of inheritance, the Iudges resolued that hee should hold of his Donor, as his Donor held ouer: as if the Tenant had made a Feoffment in Fee at the Common Law, the Feoffee should haue holden of the Feoffor as he held ouer, and before the Statute of W.2. the Donee had holden of the Donor as of his person, and now of him as of his reuersion: but if a man make a lease for life, or yeares, and reserue nothing, he shall haue fealtie only and no rent, though the Lessor hold ouer by rent, &c. And this that Littleton saith, is regularly true, if the Donor maketh no speciall reseruation, for then the speciall reseruation excludes the tenure which the Law would create. As if Tenant by Knights seruice maketh a gift in taile reseruing fealtie and rent, the Donee shall hold in Socage, by fealtie and rent, and not by Knights seruice. But if a man hold land of the King in Gland Seriantie, & maketh a gift in taile generally, in this case the Donee shall not hold of the Donor by Gland Seriantie, because no man can hold by Gland Seriantie, but of the King only, as hereafter
153 shall be said, and therefore seeing Gland Seriantie doth include Knights Seruice, he shall in that case hold of the Donor by Knights Seruice. If a man seised of land in the right of his wife holden by Knights Seruice giueth the same lands in taile generally, the Donee shall not hold of him by Knights Seruice, because his wife held the land, and her heir nothing but in her right. And in that case the Baron hath gained a new reuersion by wrong, and therefore such a Donee shall doe fealtie only.

2 Ro.501.

Pl.534.695.

A seised of two acres of land, holdeth the one of B. by Knights Seruice, and twelue pence rent, and the other of C. in Socage and one penny rent, and makes a gift in taile of both acres without any expresse reseruation of any tenure. In this case the Donor hath but one reuersion. And yet he shall make seuerall anowries, because there be seuerall tenures created by Law in respect of the seuerall tenures ouer: and the anowrie is made in respect of the tenures.

Lord, Mesne and Tenant, the Tenant holdeth by foure pence, and the Mesne by twelue pence, the Tenant makes a gift in taile without reseruing any thing, by reason whereof he holdeth by foure pence, in respect of the tenure ouer. Afterwards the reuersion escheat now shall the Donee hold by twelue pence, for the Mesnaltie which was foure pence is extinct, and the Law reserued the Tenure vpon the gift in taile, in respect of the Mesnaltie, and when the Mesnaltie is extinct, the former Rent betweene the Donor and Donee is extinct also, and then by the same reason that the Donee shall take aduantage, if the Donor by release or confirmation had holden by lesser Seruices, by the same reason he shall bee preiudiced, when he holdeth by greater Seruices.

49.E.3.10.

V.2 Rus.201.

¶ *Forspriſe les Donees en Frankmarriage.* It is to bee vnderstood, that although the land be giuen in liberum maritagium, in free marriage generally, yet first the Law doth make a limitation of this word (free) viz. till the fourth degree bee past, for the reason that our Author here yeelds. And 2. albeit it bee free marriage, yet the Donees and their issues vntill the fourth degree be past shall doe fealtie, for that is incident to euerie tenure (except Frankalmoigne) and cannot be separated from it, and therefore the Donees & their issues shall hold it as freely till the fourth degree be past as the Donor can make it. See more of this in the Chapter of Frankalmoigne. *Infra* 138.

Bracton lib.2 fol.21. Britton cap.119. Fleta lib.3,cap.11. & lib.6.cap.2. Vide Sect.17.20.

Sect. 20.

¶ Et les degrees en frankmariage serront accõpts en tiel manner. S. de

And the degrees in frankmarriage shall bee accounted in this manner, *viz.* from

¶ Where Littleton saith (a) that the Donees in Frankmarriage shall hold by fealtie onely vntill the fourth degree

(a) Vide Sect.19.19.137. 268.269.271.733.

degree be past, & then the issue in the fifth degree shall hold of the Donor as the Donor holdeth ouer, (b) Vide Bracton vbi supra, Ita quod ille cui terra sic data fuit, nullum inde faciat seruicium vsque ad tertium hæredem & vsque quartum gradum, ita quod tertius hæres sit inclusus. And herewith also agreeth Fleta vbi supra. And the (c) learning of degrees set out in the Ciuill and Canon Law (wherein I finde some difference) is worth the knowledge, to the end that Littleton and the law in this case may the better bee vnderstood, which I will diuide into certaine rules, whereof the first is, That a person added to a person in the line of Consanguinitie maketh a degree. And it is to bee vnderstood, that a line is threefold, viz. the line ascending, descending, and collaterall. And first for example, of the ascending line, take the Sonne and adde the Father, and it is one degree ascending, adde the Grandfather to the Father, and it is a second degree ascending.

(b) Glanuill lib.7.cap.18. Bract.lib.2.fol.21. Britton cap.119. Fleta lib.3.cap.11. & lib.6.cap.2.

(c) Vide 16.E.3.tit. anowrie.157. 31.E.3.cessauit.22. 31.E.3.gard.116. 21.H.7.30.

1. Rule.

So as how many persons there be, take away one, and you haue the number of degrees. If there be foure persons it is the third degree, if fiue the fourth, for one must exceed, and then you haue the degree. Likewise by the descending, take the Father, and adde the Sonne, and it is one degree, then take the Sonne & adde the Grandchilde, and it is the second degree, and so likewise further. Wherein obserue that the Father, Son and Grandchilde, albeit there are three persons, yet they make but two degrees, because (as it hath beene said) one must exceed for making a degree.

2.

It is to be noted, that in euery line the person must be reckoned from whom the computation is made. And there is no difference betweene the Canon and Ciuill Law in the ascending and descending line, for those whom the Ciuilians doe reckon in the second degree, the Canonists do reckon in the first, and those whom they place in the fourth, these place in

le donor a les donées en frankmarriage, le primer degrée, pur ceo que la feme que est vn des donees couient estre file, soer, ou auk cousin a le donor. Et de les donees tanque a lour issue il serra accompt le second degree, & de lour issue tanque a son issue, le tierce degree, & issint ouster &c. Et la cause est, pur ceo que apres chesc tiel done les issues queux veignont de le donor, & les issues queux veignont de les donees apres le quart degrée passe de ambideux parties en tiel forme dessit accompt, poyent enter eux per la ley de saint Esglise entermarrie. Et que le donee en Frankmarriage serra dit le prime degrée de les quart degrées home poit veier en vn plee sur vn breue de Droit de Garde P. 31.E.3. Lou le Pl. counta, que son tresaiel fuit seisie de cert terre, &c. & ceo tenust dun autre per seruice de chiualer, &c. quel dona la terre a vn Rafe Holland ouesqz sa soer en Frankmarriage, &c.

the Donor to the Donees in Frankmarriage the first degree, because the wife, that is one of the Donees, ought to bee daughter, sister or other cosen to the Donor, & from the donees vnto their issue shall be accounted the second degree, & from their issue vnto their issue the third degree, and so forth. And the reason is, because that after euerie such gift, the issues of the Donor, and the issues of the Donees after the fourth degree past of both parties in such forme to be accounted may by the Law of the holy Church entermarrie. And that the Donee in Frankmarriage shall be said to bee the first degree of the foure degrees, a man may see in a plea vpon a Writ of Right of Ward, P. 31. *E.* 3. where the Pl. pleadeth that his great Grandfather was seised of certaine lands, &c. and held the same of another by Knight seruice, &c. who gaue the land to one *Raphe Holland* with his sister in Frankmarriage, &c.

in the ſecond. Therefore if we will know in what degree two of kindred doe ſtand according to the Ciuill Law, wee muſt begin our reckoning from one, by aſcending to the perſon from whom both are branched, and then by deſcending to the other to whom we doe count, and it will appeare in what degree they are. For example, In brothers and ſiſters ſons, take one of them and aſcend to his father, there is one degree from the father to the grandfather, that is the ſecond degree, then deſcend from the grandfather to his ſonne, that is the third degree, then from his ſonne to his ſonne, that is the fourth. But by the Common Law there is another computation, for the Canoniſts doe euer begin from the ſtocke, namely from the perſon of whom they doe deſcend; of whoſe diſtance the queſtion is, For example, if the queſtion be, In what degree the ſonnes of two brothers ſtand by the Canon Law: we muſt begin from the grandfather and deſcend to one ſonne, that is one degree; then deſcend to his ſonne, that is another degree; then deſcend againe from the grandfather to his other ſonne, that is one degree, then deſcend to his ſonne, that is a ſecond degree, ſo in what degree either of them are diſtant from the common ſtocke, in the ſame degree they are diſtant betweene themſelues: And if they be not equally diſtant, then we muſt obſerue another rule. In what degree the moſt remote is diſtant from the common ſtocke, in the ſame degree they are diſtant betweene themſelues, and ſo the moſt remote maketh the degree. And albeit the Donee be a Couſin in the third or fourth degree from the Donor, yet in this computation it maketh the firſt degree: Gradus dicitur a gradiendo, quia gradiendo aſcenditur & deſcenditur. And thus much of the Ciuill and Canon Law is neceſſarie to the knowledge of the Common Law in this point: And herewith agreeth our Author in the words following. Canon

¶ *Les iſſues queux veignont de le donor, & les iſſues queux veignont de les donees apres le 4. degree paſſe dambideux parties in tiel forme deſte account poient enter eux per le Ley de Saint Eſgliſe entermarrier.* (De Saint Eſgliſe) (d) So as hereby it appeareth, That the computation of the degeees in this caſe, muſt be according to the Canon Law. But it is neceſſarie to be knowne concerning marriages betweene perſons of kindred one to another, that it is enacted (e) by the Statute of 32. H. 8. that no reſeruation or prohibition (Gods Law except) ſhall trouble or impeach any marriage without the Leuiticall degrees.

(d) Brit. ca. 119. Accord. Flet. lib. 3. ca. 11. & lib. 6. c. 2.

(e) 32. H. 8. ca. 38.

The caſe vouched by Littleton in 31. E. 3. you ſhall finde abridged by Fitzh. tit. grad. 116. And albeit this yeare of 31. E. 3. was neuer in print till Fitzherbert did abridge it and publiſh it in print anno 11. H. 8. and goeth vnder the name of broken yeares, yet here it appeareth by our Author, that the ſame is of authoritie in Law, as hereafter alſo in other places ſhall be obſerued.

Sect. 21.

¶ ET touts ceux Tailes auantdits ſont ſpecifies en le dit eſtatute de W. 2. Auxy ſont diuers autres eſtates en le taile, coment q̄ ne ſont ſpecifies per expreſſe parols in le dit eſtatute, mes ils ſont priſes per le equitie de le dit Statute. Sicome Terres ſont dones a vn home & a ſes heires males de ſon corps engendres, en

AND all theſe Entailes aforeſaid be ſpecified in the ſaid Statute of *w.* 2. Alſo there bee diuers other eſtates in taile, though they bee not by expreſſe words ſpecified in the ſaid Statute; but they are taken by the equitie of the ſame Statute. As if lands be giuen to a man, and to his heires males of his body begotten; in this caſe his iſſue male ſhall

¶ *ET touts ceux Tailes auauntdits ſont ſpecifies en le dit Statute de weſtminſter* 2. And ſo it appeareth by the ſaid Statute Auxy ſont diuers autres eſtates en le taile, &c. And herewith agreeth Carbonels Caſe, 33. Edw. 3. titulo Taile 5.

That the caſes of the Statute are ſet downe but for examples of eſtates taile, generall and ſpeciall, and not to exclude other eſtates taile. 3. E. 3. 32. 18. Aſſ. p. 5. 18. E. 3. 46. 1. Mar. Dyer 46. Pl. Com. Seignior Barkleys caſe, fo. 251. For, Exempla illuſtrant non reſtringant legem.

3. E. 3. 32. 18. E. 3. 46. 18. Aſſ. p. 5. 1. Mar. Dyer. Pl. Com. 251.

¶ *Equitie*

¶ *Equitie* is a conſtruction made by the Iudges, that caſes out of the letter of a ſtat. yet being within the ſame miſchiefe, or cauſe of the making of the ſame, ſhall bee within the ſame remedie that the Statute prouideth: And the reaſon hereof is, for that the Law-maker could not poſſibly ſet downe all caſes in expreſſe termes, Æquitas eſt conuenientia rerum quæ cuncta coæquiparat, & quæ in paribus rationibus paria jura & judicia deſiderat. And againe, Æquitas eſt perfecta quadam ratio quæ jus ſcriptum interpretatur & emendat, nulla ſcriptura comprehenſa, ſed ſolum in vera ratione conſiſtens. Æquitas eſt quaſi æqualitas, Bonus Iudex ſecundum æquum & bonum judicat, & æquitatem ſtricto juri præfert. Et jus reſpicit æquitatem.

tiel caſe ſ iſſue male inherita, & le iſſue femal ñ vnqz enherita pas, vncore in l's auts tailes auantdits auterment eſt.

inherit, and the Iſſue female ſhall neuer inherit, and yet in the other entailes aforeſaid, it is otherwiſe.

Brac.lib.4.fol.186.
(b) 18.Aſſ.p.5. 18.E.3.46. 33.E.3.tit.Taile 5. 3.E.3.32. Pl.Com.Seigniour Barkleys caſe. 1.Mar.Dy.46.V.Sect.24.

¶ *Sicome terres ſont done a vn home & a les* (b) *heires males de ſon corps engendres, en tiel caſe ſon iſſue male inheritera, & liſſue female ne vnques inheritera, &c.* This ſhall be explaned afterward, Sect. 24.

Sect. 22, & 23.

¶ These two Sections, or any thing therein, doe need no explanation, in reſpect they ſhall bee alſo explaned hereafter in the next Section, ſauing onely theſe words (queux doient inheriter) are verie obſeruable, for they imply a diuerſitie betweene a deſcent and a purchaſe. For when a man giueth lands to a man and the heires females of his body, and dieth hauing iſſue a ſon and a daughter, the daughter ſhall inherit; for the will of the donor (the Statute working with it) ſhall be obſerued. But in caſe (g) of a purchaſe it is otherwiſe: For if A. haue iſſue a ſonne and a daughter, and a leaſe for life be made, the remainder to the heires females of the body of A. A. dieth, the heire female can take nothing, becauſe ſhe is not heire; for ſhe muſt be both heire and heire female, which ſhe is not, becauſe the brother is heire, and therfore the will of the giuer cannot bee obſerued, becauſe here is no gift, and therefore the ſtatute cannot worke thereupon. And ſo it is if a man hath a ſonne and a daughter, and dieth, and lands be giuen to the daughter, and the heires females of the body of her father, the daughter ſhall take

(g) 9.H.6.24. 11.H.6.13. 14.37.H.8. Br.tit. Done 42. Tit.noſme 1. & 40. Dyer 23.El.374. Shelleys caſe lib. 1. fo.

¶ Mñ le manner eſt, ſi tres ou tenements ſoint dones a vn hõe & a ſes hres females de ſon corps engendres, en tiel caſe ſon iſſue female luy inheritera p force & forme de le dit done, & nemy iſſue male, pur ceo que en tiels caſes de dones faits en le taile, queux doient enheriter, & q̃r nemi la volunt dl donor ſerr̃ obſerue.

IN the ſame manner it is, if Lands or Tenements be giuen to a man, and to his heires females of his bodie begotten; In this caſe his iſſue female ſhall inherit by force and forme of the ſaid gift, and not his iſſue male. For in ſuch caſes of gifts in taile, the will of the Donor ought to bee obſerued, who ought to inherit, and who not.

¶ Et en le caſe q̃ terrs ou tenements ſont dones a vn hõe, & a ſes heires males d̃ ſ corps iſſuants, & il ad iſſue deux fits, & deuy, & leign fitz entra come hr̃ male, & ad iſſue file & deuy, ſ fret̃ aſſa la tr̃, & nemi la file, pur

AND in caſe where lands or tenements be giuen to a man, and to the heires *male* of his bodie, and hee hath iſſue two ſonnes, and dieth, and the eldeſt ſon enter as heire male, and hath iſſue a daughter, and dieth; his brother ſhall haue the land, &

ceo

ceo que le frere eſt heire male. Mes autrement ſera en autres tailes que ceo ſont ſpecifies en le dit Statute.

not the daughter, for that the brother is heire male. But otherwiſe it is in the other entailes, which are ſpecified in the ſaid Statute.

nothing but an eſtate for life, becauſe there is no ſuch perſon, ſhe being not heire. But where a gift is made to a man, and to the heires female of his body, there the Donee being the firſt taker is capable by purchaſe, & the heire female by deſcent, ſecundum formam doni: and therefore Littleton purpoſely added theſe words, Queux doient inheriter.

Sect. 24.

¶ Auxy ſi terres ſoient donées en fee, & a les heires males de ſon corps engendrés, & il ad iſſue file, & ad iſſue fits & deuy, & puis apres le donée deuy, cest caſe le fits de la file ne inheritera paſſe p force de le taile, pur ceo que quecunque que ſera inherit per force dun done en le taile fait as hers males, couient conueyer ſon diſcent tout per les heires males. Mes en tiel caſe le donor poet entrer pur ceo q̄ le donée eſt mort ſans iſſue male en la Ley, entaunt que le iſſue del file ne poet conueyer a luy meſme le diſcent per heire male.

ALſo if lands bee giuen to a man & to the heires males of his body, & he hath iſſue a daughter, who hath iſſue a ſonne, and dieth, & after the donee die; In this caſe, the ſon of the daughter ſhall not inherit by force of the intaile, becauſe whoſoeuer ſhall inherit by force of a gift in taile made to the heires males, ought to conuey his deſcent wholly by the heires males. Alſo in this caſe the Donor may enter, for that the Donee is dead without iſſue male in the Law, inſomuch as the iſſue of the daughter cannot conuey to himſelfe the deſcent by an heire male.

¶ *Quecunq; ſera enheriter per force dun done en Taile, &c.* Vide Tr.(h)28. H. 6. tit. Deuiſe 18. (which is not in the booke at large, but written verbatim out of Statham) If a man deuiſe lands to a man, & to the heires males of his body, and hath iſſue a daughter, which hath iſſue a ſonne, this ſonne ſhall be inheritable, and notwithſtanding in a gift in taile the Law is otherwiſe, and that by the opinion of all the Iudges in the Exchequer Chamber. But I hold this caſe to be ill reported, vnleſſe you will referre the opinion of the Iudges to the gift in taile laſt mentioned. For firſt, albeit a Deuiſe may create an Inheritance by other words than a gift can, yet cannot a Deuiſe direct an inheritence to deſcend againſt the rule of Law. Secondly, there is no intent of the Deuiſor appearing, that the ſonne of the daughter ſhould, againſt the rule of Law, inherit, and the Statute prouideth, that voluntas Donatoris, &c. obſeruetur. And I haue heard this caſe often denied to bee Law, both in the Kings Bench, & in the Common Pleas, vide

Vide Sect. 719.
(h) 1. H. 6. 24. 11. H. 6. 13. 14.
28 H. 6. tit. Deuiſe 18. Statham tit. Deuiſe. Pl. Com. in Scholaſt. caſe 414. b.
20. H. 6. 43. 37. H. 8. Pr. tit. Done & Rem. 61. tit. noſme 1. & 40.

Pl. Comment. 414. b. And ſo it is (i) mutatis mutandis, when a gift in taile is made to a man, and to his heires females of his body, and he hath iſſue a ſonne, who hath iſſue a daughter, this daughter ſhall neuer inherit, becauſe ſhe muſt conuey by deſcent from females. And for the reaſon hereof ſee a notable caſe in 15. E. 2. tit. Corone 385. where it is adiudged (as before it had beene) That the ſonne of a female ſhould haue an appeale of the death of a Coſin, and yet the daughter her ſelfe ſhould neuer haue had it. But there it is agreed, that the ſonne of a female (k) in a Liberrate probanda, ſhould be no witneſſe or proofe againſt the iſſue of the male. And the reaſon of this diuerſitie is verie obſeruable: For by the Common Law the female

(i) 11. H. 6. 13.
15. E. 2. tit. Cor. 386.
(k) Mirror c. 2. ſect. 7. vid. Glanuil. lib. 14. cap. 3.

 might

might haue had an appeale as heire to any of her Ancestors, as well as the male. But by the Statute of Magna Charta, cap. 34. Nullus capietur aut imprisonetur propter appellam fœminæ de morte alterius quam viri sui, which restraineth not the son of the female. And there Scrope saith, Per tout le Serjeant d' Angliterre, that is, by all the Judges of the Coife in England, it was awarded, that the issue of the female should haue an appeale for the death of his Cousin. But in a libertate probanda, the issue of the bloud female shall not be receiued to proue villenage in the issue of the bloud male, for the mother was disabled by the Common Law, and the mother might be a neife De en & trene, that is, of the Water and Whip of three cord, (meaning such a bondwoman as is vsed to seruile workes and correction) and enfranchised by her husband. All which appeareth in the said booke. And it is holden in 17. E. 4. 1. that if a man be slaine which hath no heire of the part of his father, that his vncle of the part of his mother shall haue the appeale, and yet he must of necessitie make his conueyance by a woman, Vid. 20. H. 6. fo. 33. the question suddenly demanded & debated, and no consideration or mention had of the said former iudgements & authorities; there it is compared to a gift in taile to a man and to his heires males of his body, that the heire male of the daughter shall not inherit which hath no affinitie to it, and yet the authoritie of the booke is great, for it is by the assent of all the Iustices of the one Bench and the other in the Exchequer Chamber, and therefore I leaue the learned and iudicious reader to his owne iudgement. (l) Vide Stanford 58. b. 15. E. 2. 384. If a man giue lands to a man & to the heires males of his body begotten, remainder to him and to his heires females on his body begotten, the Donee hath issue a sonne who hath issue a daughter, who hath issue a sonne, this sonne is not inheritable to either of both their estates taile, because as Littleton saith, The male must make his conueyance only by males, & so must the females by females. But in this case the land shall reuert to the Donor. And therefore the safest way when a man will entaile his lands to the heires males and females of his body, is to limit the first estate to him and the heires males of his body, the remainder to him and to the heires of his body, and then all his issues whatsoeuer are inheritable. But if A. hath issue a sonne and a daughter and dieth, and the sonne hath issue a daughter and dieth, and a lease for life is made, the remainder to the heires females of the body of A. In this case the daughter of A. shall not take causa qua supra. But albeit the daughter of the son maketh her conueyance by a male she shall take an estate taile by purchase, for she is heire and a female, but if lands be deuised to one for life, the remainder to the next heire male of B. in taile, and B. hath issue two daughters & each of them hath issue a sonne and the father & daughters die, some say this remainder is void for the vncertaintie, some say that the eldest shall take it because he is worthiest, and others say that both of them shall take for that they both make but one heire. If lands be giuen to a man and to his heires males or females of his body he hath an estate in generall taile in him.

Vid. Seignior de la Wares case, lib. 11. fol. 1.

17. E. 4. 1.

20. H. 6. 43.

(l) Stanford. 58. b. 15. E. 2. tit. Coron. 384.

11. H. 6. 13.
9. H. 6. 25.

Sect. 25.

CAe vn home, & a sa feme. But what if tenements bee giuen to a man, and to a woman being not his wife, and to the heires males of their two bodies, they haue also an estate taile, albeit they bee not married at that time. And so it is if lands bee giuen to a man which hath a wife, and to a woman which hath a husband, & the heires of their two bodies, they haue presently an estate taile (m) for the possibilitie that they may marrie. But if lands be giuen to two husbands & their wiues, and to the heires of their bodies begotten (n) they shall take a ioynt estate for life & seuerall inheritances, viz. the one husband & his wife the one moytie, and the other husband and wife the other moytie, and no crosse remainder or other possibilitie shall be allowed by Law, where it is once settled & take effect. But if lands be giuen to a man & two women and the heires of their bodies begotten, (o) In this case they haue a ioynt estate for life and euerie of them seuerall inheritance, because they cannot haue one issue of their bodies, neither shall there be by any construction a possibilitie vpon a possibilitie, viz. that he shall marrie the one first and then the other. And the same Law it is (p) when land is giuen to two men and one woman, and to the heires of their bodies begotten.

11. E. 3. Formdon 20.

(m) 13. H. 7. 18. Li. 1. Dilon & Frems case. 40. Ass. p. 13.
(n) 24. E. 3. 29. 2.

(o) 7. H. 4. 16. 18. E. 3. 78. Litleton fol. 66. 15. Eliz. Dier 326.
(p) 44. E. 3. tit. taile 13.

CEn meisme le maner est, lou tenements sont done a vn hõe, & a sa feme, & a les heires males de lour deux corps engendres, &c.

IN the same manner it is, where lands are giuen to a man and his wife, and to the heires males of their two bodies begotten, &c.

Sect.

Sect. 26, 27.

26,27. These two Sections néed no explanation at all.

ITem si teñts soient dones a vn home & a la feme, & a les heires del corps del home engendres, en ceo case le baron ad estate en le taile generall, & la feme forsqz estate pur terme de vie.

ALso if Tenements be giuen to a man and to his wife, and to the heires of the bodie of the man; In this case the husband hath an estate in generall taile, and the wife but an estate for terme of life.

ITem si terres soient dones a le baron & sa feme, & a les heires le baron, queux il engendra de corps sa feme, en ceo case le baron ad estate en le taile special, & la feme forsque pur terme de vie.

ALso if lands bee giuen to the husband and wife, and to the heires of the husband which hee shall beget on the body of his wife, In this case the husband hath an estate in especiall taile, and the wife but an estate for life.

Sect. 28.

ET si le done soit fait al baron & a la feme, & a les heires la feme de sa corps per le baron engendres, donque la feme ad estate en especial taile, & le baron forsqz pur terme de vie: Mes si terres sont dones a le baron & a la feme, & a les heires que le baron engendra de corps la feme, ẽ ceo case ambideux ont estate en la taile, pur ceo que cest parol (heires) nest limit a lun pluis que a lauter.

AND if the gift be made to the husband and to his wife, and to the heires of the body of the wife by the husband begotten, there the wife hath an estate in speciall taile, and the husband but for terme of life: but if lands be giuen to the husband & the wife, and to the heires which the husband shall beget on the body of the wife, in this case both of them haue an estate taile, because this word (heires) is not limited to the one more than to the other.

CHeires. This word (heires) is nomen operationum, to which of the Donees it is limited, it createth the estate taile, but if it incline no more to the one than to the other, then both doe take, as here Littleton putteth the case. And therewith accordeth the case of (q) 3. E. 3. where it appeareth; Quod Robertus de S. dedit Iohanni de Kipariis & Matildæ vxori eius, & hæredibus quos idem Iohannes de corpore ipsius Matildæ procrearet, &c and this adiudged to be an estate in especial taile in them both, because the state is equally tailed to the heires of the baron as to the heires of the wife. If lands be giuen to the husband & the wife, & to the heires of the body of the suruiuour, the gift is good, & the suruiuour shal haue an estate in taile generall, but the estate taile resteth not till there be a suruiuour. And hereby it appeareth (r) that a gift made to a man & to the heires of his body, is as good as to his heires of his body.

19.H.6.75.a.Regist.239. 27.E.2. tit. Taile 23. 3.E.3.32. 4.E.3.43. 5.E.3.29.b. & 34.a. 31.E.3.43. 12.H.4.1.

(q) 3.E.3.32. 21.E.3.43. 29.H.6.75. per Hody.

Regist. 239.

(r) 29.E.3.Bre.377.

Sect. 29.

20.H.6.36.
(1) Lib.1.fol.140.b. Chauleighs case adiudge.

¶ This is euident by that which hath beene said and needeth no explanation. But it hath beene said,(1) that if a man giue land to another and to his heires of the body of such a woman lawfully begotten, that this is no estate taile for the vncertainty by whom the heires shall be begotten, for that the brother of the Donee or other cousin may haue issue by the woman which may be heire to the Donee, and estates in taile must be certaine. Therefore our Author to make it plaine in all his cases added to these words (his heires) which he shall ingender. But that opinion is since our Author wrote ouer-ruled, and that estate adiudged to be an estate taile, and begotten shall be necessarily intended begotten by the Donee.

¶ Item si terre soit done a vn home & a ses heires que il engendra de corps sa feme, en ceo case le baron ad estate en especial taile, & la feme nad riens.

ALso if land be giuen to a man and to his heires which hee shall beget on the body of his wife, In this case the husband hath an estate in especiall taile, and the wife hath nothing.

Sect. 30.

17.E.2. Taile 23. 2E.3.1. tit. Taile 7. 4.&5.Ph.& Mar. Dier 156. 12.H.4.1, 15.H.7.10.

¶ *Si home ad issue fits & deuie, &c.* Iohn de Mandevile by his wife Roberge had issue Robert and Mawd, Michael de Mercvill gaue certaine lands to Roberge and to the heires of Iohn Mandevile her late husband on her body begotten, and it was adiudged that Roberge had an estate but for life, and the fee taile vested in Robert (heires of the body of his father being a good name of purchase) and that when he died without issue, Mawd the daughter was Tenant in taile as heire of the body of her father per formam doni, and the Formedon which she brought supposed, Quod post mortem præfatæ Robergiæ & Roberti filii & hæredis ipsius Iohannis Mandeuille & hæred' ipsius Iohannis de præfata Robergia per præfatum Iohannem procreat, præfat' Matildæ filiæ prædict' Iohannis de præfatâ Robergia per præfatum Iohannem procreatæ sorori & hæredi prædicti Roberti descendere debet per formam donationis prædict'. And yet in truth the land did not descend vnto her from Robert, but because she could haue no other writ, it was adiudged to be good. In which case it is to be obserued that albeit Robert being heire tooke an estate taile by purchase, and the daughter was no heire of his body at the time of the gift, yet she recouered the land per formam doni, by the name of heire of the body of her father, which notwithstanding her brother was and he was capable at the time of the gift; and therefore when the gift was made shee tooke nothing, but in expectancie, when shee became heire per formam doni. But where a man by deed gaue lands to Emme late wife of Iohn Master, habendum & tenendum prædict' Emme & hæredibus Iohannis Master de corpore eiusdem Emme procreat'. In that case the sonne and heire of Iohn Master begotten on the body of Emme tooke no estate with Emme in the lands, because he was named after the habendum.

5.H.4.3.2.

Ms: v: 7: a' h21: a, hoc nesme apres le Habend prendra &c.

¶ Item si home ad issue fits, & deuie, & terre est done al fits, & a les heires de corps son pier engendres, ceo est bone taile, & vncore le pier fuit mort al temps de la done. Et mults auters estates en taile y sont per le equitie del dit estatute que icy ne sont specifies.

ALso if a man hath issue a sonne and dieth, and land is giuen to the sonne, and to the heires of the body of his father begotten, this is a good entaile, and yet the father was dead at the time of the gift. And there bee many other estates in the taile by the equitie of the said Stature, which be not here specified.

¶ If a man hath issue two daughters, and dieth seised of two acres of land in Fee simple, and the one Copartener giueth her part to her sister, & to the heires of the body of her father, In this case the Donee hath an estate taile in the moity of the Donors part, for the Donee is not entire heire but the Donor is heire with the Donee, and shee cannot giue to the heires of her owne body, & the Donee hath the other moity of her sisters part for life. If a man hath issue a sonne and a daughter, and dieth, and land is giuen to the daughter and to the heires females of

of the body of the father, ſhe taketh but an eſtate for life, becauſe ſhe is not heire female to take by purchaſe as before hath beene ſaid. 24. b. *

¶ *Et a les heires de corps le pier.* Theſe words (les heires) are obſeruable, for if they were (ſes heires) it cleerly altereth the caſe. And therefore if lands be giuen to the ſonne and to his heires of the body of his father, the ſonne cannot take as heire of the body of his father, becauſe the grant is to him & to his heires, &c. and conſequently he hath a Fee ſimple. But if there be Grandfather, Father and Sonne, and the Father dieth, and lands be giuen to the Sonne, and to the heires of the body of the Grandfather, this is a good eſtate taile in the Sonne, ſo as Littleton did put his caſe of the Father but for an example.

¶ *Et mults auters eſtates en le taile y ſont, &c.* This needeth no explanation.

Sect. 31.

¶ MEs ſi home done terres ou tenements a vn auter, a auer & tener a luy & a ſes heires males, ou a ſes heires females, il a que tiel done eſt fait ad Fée ſimple, pur ceo que neſt my limit per le done de quel corps iſſue male ou female iſſera, & iſſint ne poit en aſcun maner eſtre prize per lequitie del dit eſtatute & pur ceo il ad Fée ſimple.

¶ BVt if a man giue Lands or Tenements to another, to haue and to hold to him and to his heires males; or to his heires females, hee to whom ſuch a gift is made, hath a Fee ſimple, becauſe it is not limited by the gift, of what body the iſſue male or female ſhall be, and ſo it cannot in any wiſe be taken by the equitie of the ſaid Statute, and therefore he hath a Fee ſimple.

¶ T*Erres ou Tenements.* This rule extendeth but to Lands or Tenements, and not to the Inheritance that Noblemen and Gentlemen haue in their Armories or Armes. For where the Nobleman or Gentleman hath a Fee ſimple in his Armories or Armes, yet is the ſame deſcendible to the heires males lineall or collaterall. For albeit a Female bee heire at the Common Law, yet the Shield, Armories & Armes deſcend vnto them that are able to beare them (farre exceeding the nature of Gauelkinde, but with ſeuerall differences.) And all the females of that family in reſpect that they be of the ſame blond, may in a loſenge or vnder a Curtaine manifeſt of what family they be by expreſſing the Armories and Armes belonging to that Family, and the husband of them may impale them or quarter them with their owne as the caſe ſhall require. And for diſtinction and better explanation hereof. If the King by his Letters Patents giueth Lands or Tenements to a man, and to his heires males, the grant is void, for that the King is deceiued in his grant, in as much as there can be no ſuch inheritance of lands or tenements as the King intended to grant. But if the King for reward of ſeruice granteth Armories or Armes to a man, and to his heires males without ſaying (of the body) this is good, and as hath beene ſaid, they ſhall deſcend accordingly.

18. H. 8. tit. Patents. Br. 104.

If a man by his laſt will deuiſe lands or tenements to a man and to his heires males, this by conſtruction of Law is an Eſtate taile, the Law ſupplying theſe words (of his body.) Vide the Princes (t) Caſe where it appeareth that an act of Parliament may limit an Inheritance of lands or tenements, otherwiſe than Common Law would doe, and create a new Eſtate of Inheritance, and many authorities in Law there cited worthy of note and obſeruation. Rot. Parliam. anno 1. E. 4. nu. 26. The (u) Duchie of Lancaſter is intailed to King Edward the fourth and his heires Kings of England. And King Henry the ſixth did by his Letters Patents grant Iohanni filio Iohannis Talbot quod ipſe & hæredes ſui Domini manerii de Kingſton Liſle in comitatu Berk: ex nunc Domini & Barones de Liſle Nobiles & Proceres regni habeantur, teneantur, & reputentur, &c. by this hee had a Fee ſimple qualified in the Dignitie.

27. H. 8. 27.
(t) Lib. 8. fo. 1. The Princes caſe.
21. E. 3. 4. 22. E. 3. 3. 24. E. 3. 53. 9. H. 6. 25. 9. E. 4. 15. 1. Mar. Dier, 94.
(u) Per literas patentes authoritate parliamenti.

2. H. 5. fol. 1. A grant was made to a man, and to his heires Tenants of the Manno of Dale. A man ſeiſed of lands in Gauelkinde, giue or deuiſe the ſame to a man and to his eldeſt heires, he cannot hereby alter the cuſtomarie Inheritance, but as in the caſe of our Au-

Mich. 26. & 27. Eliz. in Com. Banco. Leonard Louelace case.

thor, Vt res magis valeat, the Law reiecteth (Males) so in this case the Law reiecteth this Adiective (eldest.) And so it is if Lands be giuen to a man, and to the eldest heires females of his body, yet all his daughters shall inherit as it hath beene resolued.

¶ *Et issint ne poet este prise per lequitie del dit statute, &c.* For it is a certaine rule in Law that in euerie estate in taile within the said statute, it must be limited either by expresse words or by words equipollent of what body the heire inheritable shall issue. And it was (x) adiudged in Parliament, that where lands were giuen to a man, and to his heires males, that this was a Fee simple, and that as well the heires females as heires males should inherit, for the grant of a subiect shall be taken most strongly against himselfe.

(x) 18. Ass. p. 5. 18. E. 3. 46. 6. 9. H 6. 23. 25. lib. 8. fol. 1. The Princes case. Ancient tenures. fol. 3.

¶ *Et pur ceo il ad Fee simple.* Littletons reason being shortly collected is this. Whosoeuer hath an Estate of inheritance, hath either a Fee simple or a Fee taile, but where lands be giuen to a man and his heires males, he hath no Estate taile, and therefore hee hath a Fee simple.

What actions tenant in taile may haue and cannot haue, vide Sect. 595. What great alterations haue beene made since Littleton wrote concerning not only leases to be made by tenant in taile, but barres also of the Estate taile it selfe by force of certaine Acts of Parliament made since Littletons time, you shall read Sect. 56. and 708.

Chap. 3. Sect. 32.

Tenant in taile apres possibilitie dissue extinct.

Littleton hauing spoken of Estates of Inheritance, viz. Fee simple & Fee taile, now he treateth of Tenants of Freehold tantum, that is, for terme of life, and therein first of Tenant in taile after possibilitie of issue extinct, and he giueth vnto him the first place, because this Tenant hath eight qualities and priuileges, which Tenant in taile himselfe hath, & which Lessee for life hath not, (a) As first he is dispunishable for waste. Secondly, hee shall not be compelled to attorne. Thirdly, he shall not haue aid of him in the reuersion. Fourthly, vpon his alienation, no Writ of entrie in consimili casu, lieth. Fifthly, After his death no Writ of intrusion doth lie. Sixthly, Hee may ioyne the mise in a Writ of right, in a speciall manner. Seuenthly, In a Præcipe brought by him hee shall not name himselfe tenant for life. Eightly. In a Præcipe brought against him hee shall not bee named barely tenant for life. And yet he hath foure other qualities which are not agreeable to an

(a) Temps E. 1. wast. 125. 39. E. 3. 16. 31. E. 3. aid. 35. 42. E. 3. 22. 43. E. 3. 1. 45. E. 3. 22. 28. E. 3. 96. 46. E. 3. 13. 27. 2. H. 4. 17. 7. H. 4. 10. 11. H. 4. 15. 21. H. 6. 56. 10. H. 6. 1. 26. H. 6. aid 77. 3. E. 4. 11. 13. E. 2. Entre Conge 56. Fitz. N. B. 203. Lewes Bowles case, lib. 11. fol. 80.

¶ Tenant en Fee taile apres possibilitie dissue extinct est, lou tenements sont dones a vn home & a sa feme en especiall taile, si lun de eux deuy sans issue, celuy que suruesquist est Tenant en taile apres possibility dissue extinct. Et sils auoient issue, & lun deuy, coment que durant la vie, issue, celuy que suruesquist ne serra dit tenant en taile apres possibilitie dissue extinct, vncore si issue deuy sans issue, issint que ne soit ascun issue en vie que poit enheriter p force de le taile, donque celuy que suruesquist

Tenant in Fee Taile after possibilitie of issue extinct is, where tenements are giuen to a man and to his wife in especiall taile, if one of them die without issue, the suruiuor is tenant in taile after possibilitie of issue extinct, and if they haue issue, and the one die, albeit that during the life of the issue, the suruiuor shall not bee said tenant in taile after possibilitie of issue extinct, yet if the issue die without issue, so as there be not any issue aliue which may inherit by force of the taile, then the suruiuing partie of the Do-

de

de les donées eſt tenant en le taile apres poſſibilitie diſſue extinct.

nees is tenant in taile, after poſſibilitie of iſſue extinct.

Eſtate in taile, but to a bare Leſſee for life. (b) Firſt, if he maketh a feoffment in fee, this is a forfeiture of his Eſtate. Secondly, If an Eſtate in fee, or in fee taile in reuerſion, or remainder deſcend or come to this Tenant, his Eſtate is drowned, and the fee or fee taile executed. Thirdly, He in the reuerſion or remainder ſhall be receiued vpon his default, as well as vpon bare tenant for life. Fourthly, an exchange betweene a bare tenant for life and him is good, for their eſtates in reſpect of their quantitie are equall, ſo as the difference ſtandeth in the qualitie, and not in the quantitie of the Eſtate. And as an eſtate taile was originally carued out of a Fee ſimple, ſo is the eſtate of this tenant out of an eſtate in eſpeciall taile. And he is called tenant in taile after poſſibilitie of iſſue extinct, becauſe by no poſſibilitie he can haue any iſſue inheritable to the ſame Eſtate taile. But if a man giueth land to a man and his wife, and to the heires of their two bodies, and they liue till each of them bee C. yeere old, and haue no iſſue, yet doe they continue tenant in taile for that the Law ſeeth no impoſſibilitie of hauing children. But when a man and his wife be tenant in eſpeciall taile, and the wife dieth without iſſue, there the Law ſeeth an apparant impoſſibilitie, that any iſſue that the husband can haue by any other wife ſhould inherit this eſtate. And let this tenant keepe his eſtate, for he hath theſe priuileges in reſpect of the priuitie of his eſtate, and of the inheritance that was once in him, (c) For in the caſe of Euens, Mich. 28. & 29. Eliz. it was adiudged that where tenant in taile after poſſibilitie of iſſue extinct granted ouer his eſtate to another, that his Grantee was compelled to attorne in a Quid juris clamat, as a bare Tenant for life, and ſo be named in the Writ, for by the aſſignement the priuitie of the eſtate being altered, the priuilege was gone, and this iudgement was affirmed in a Writ of Error, and herewith agreeth 27. H. 6. tit, aid Statham 29. E. 3. 1. b.

(b) 13. E. Entre Cong. 56. 45. E. 3. 22. 28. E. 3. 96. 27. Aſſ. p. 60. F.N.B. 150. 32. E. 3. tit. ag 55. 55. E. 3. 4. 9. E. 4. 17. 2. R. 2. reſceit. 147. 41. E. 3. 12. 20. E. 3. reſceit. 38. E. 3. 33. Lewes Bowles caſe vbi ſupra.

(c) Lib. 11. fol. 83. Lewes Bowles caſe. 27. H. 6. tit. aid. Statham, 29. E. 3. 1. b.

27 H. 6. tit. aid 29 E. 3. 1. b.

Sect. 33.

¶ Item ſi tenements ſont dones a vn home & a ſes heires que il engendra de corps ſa feme, en ceſt cas la feme nad rien en les tenements, & le baron eſt ſeiſie come Donée en ſpeciall taile. Et en ceo cas, ſi la feme deuy ſans iſſue de ſon corps engendres per ſon baron, donques le baron eſt tenant en taile apres poſſibility diſſue extinct.

ALſo if tenements be giuen to a man & to his heires which he ſhall beget on the body of his wife; In this caſe the wife hath nothing in the Tenements, & the husband is ſeiſed as Donee in eſpeciall taile. And in this caſe if the wife die without iſſue of her body begotten by her husband, then the husband is Tenant in taile after poſſibilitie of iſſue extinct.

¶ *Si la-feme deuie ſans iſſue.* So as the eſtate of this tenancy muſt be altered by the act of God, and that by dying without iſſue, for if a feoffment in fee bee made to the vſe of a man and his wife for tearme of their liues, & after to the vſe of their next iſſue male to bee begotten in taile, and after to the vſe of the husband and wife, & of the heires of their two bodies begotten they hauing no iſſue male at that time; In this caſe the husband and wife are tenants in ſpeciall taile executed, and after they haue iſſue a ſon in this caſe, they are become tenants for life, the remainder to the ſonne in taile, the remainder to them in ſpeciall taile, for albeit their Eſtate taile is turned to an Eſtate for life, yet they haue but a bare eſtate for life, but if the iſſue die, and the husband die hauing no other iſſue, and then the ſonne die without iſſue, the wife ſhall haue the priuileges belonging to a tenant in taile after poſſibilitie of iſſue extinct, as it appeareth in Lewes Bowles Caſe vbi ſupra, where it is ſaid, that the ſtate of this tenant muſt be created by the act of God, and not by limitation of the partie, ex diſpoſitione Legis, and not ex prouiſione hominis. (d) If land be giuen to a man and to his wife, and to the heires of their two bodies, and after they are diuorced cauſa præcontractus or conſanguinitatis, or affinitatis, their eſtate of inheritance is turned to a ioynt eſtate for life, and albeit they had once an inheritance in them, yet for that the Eſtate is altered by their owne act, and not by the act of God, viz. by the

Lewes Bowles caſe, lib. 11, fol. 80.

(d) 7. H. 4. 16. 8. E. 1. Aſſ. 415. 12. Aſſ. 22. 19. Aſſ. p. 2. 13. E. 3. Aſſ. 31. in fine.

the death of either partie without issue, they are not Tenants in taile after possibilitie of issue extinct. Lands are giuen to the husband & wife, and to the heires of the body of the husband, the remainder to the husband and wife, and to the heires of their two bodies begotten, the husband die without issue, the wife shall not be tenant in taile after possibilitie, for the remainder in speciall taile was vtterly void, for that it could never take effect, for so long as the husband should haue issue, it should inherit by force of the generall taile, and if the husband die without issue, then the speciall Estate taile cannot take effect, in as much as the issue which should inherit the especiall, must be begotten by the husband, and so the generall which is larger and greater, hath frustrated the especiall which is lesser. And the wife in that case shall be punished for waste.

Sect. 34

If lands be giuen to a man with a woman in Frankmarriage, albeit the woman (which was the cause of the gift) dieth without issue, yet the Husband shall be Tenant in taile, apres possibilitie, &c. for that hee and his wife were Donées in especiall taile, & so within the words of Littleton. The residue of this Section is euident.

CEt nota q̄ nul poit estre tēt en le taile aps possibilitie dissue extinct, forsqz vn des donées, ou le donée en le special taile. Car le donée en generall taile ne poit estr̄ vnqz dit tēt en taile aps possibility dissue extinct, p̄ceo q̄ touts tēps durant sa vie, il poit per possibility auer issue que poit inheriter per force de mesme le taile. Et issint en m̄ le mañ, lissue q̄ est heire a les donées en vn especial taile, ne poit estr̄ dit teñt en taile aps possibility dissue extinct, causa qua supra.

And note that none can be tenant in taile after possibilitie of issue extinct, but one of the Donees, or Donee in especiall taile. For the Donee in generall taile cannot be said to be Tenant in taile after possibilitie of issue extinct, because alwayes during his life, hee may by possibilitie haue issue which may inherit by force of the same entaile. And so in the same manner the issue which is heire to the Donees in especiall taile, cannot be Tenant in taile after possibilitie of issue extinct, for the reason aboue said.

* Et nota que tenant en taile apres possibility dissue extinct ne serra vnqz puny de wast, pur lenheritance que fuit vn foits en luy, 10. Hen. 6. 1. Mes cestuy en le reuersion poit entrer sil alien en fee, 45. E. 3. 22.

* This and that which follow, is not in the first Edition (which I haue.) And therefore (that I may speake it once for all) it was wrong to the Author to adde any thing, (especially in one context) to his worke.

And note that tenant in taile after possibilitie of issue extinct shall not bee punished of waste, for the inheritance that once was in him. 10. *H.* 6. 1. But he in the reuersion may enter if hee alien in Fee, 45. *E.* 3. 22.

CHAP.

Chap. 4. Sect. 35.

Curteſie Dengleterre.

TEnant p la Curteſie Dengleterre, lou home prēt feme ſeiſie en fée ſimple, ou en fée taile general, ou ſeiſie come heire de le taile ſpecial, & ad iſſue per meſme la feme male ou female, oyes ou vife, ſoit iſſue apres mort ou en vie, ſi la feme deuie, le baron tiendra la terre durant ſa vie, per la ley Dengleterre. Et eſt appel tenant per le Curteſie Dengleterre, pur ceo que ceo eſt vſe en nul auter realme, forſque tantſolement en Engleterre.

Et aſcuns ont dit, que il ne ſerra tenant per le Curteſie, ſi non q̄ lenfant quil ad p̄ ſa feme ſoit oye crie, car per le crie eſt pue q̄ le enfant fuit née vife: Ideo Quære.

TEnant by the Curteſie of *England* is where a man taketh a wife ſeiſed in Fee ſimple, or in Fee taile generall, or ſeiſed as heire in taile eſpeciall, and hath iſſue by the ſame wife, male or female borne aliue, albeit the iſſue after dieth or liueth, yet if the wife dies, the husband ſhall hold the land during his life by the Law of *England*. And he is called Tenant by the Curteſie of *England*, becauſe this is vſed in no other Realme but in *England* onely.

And ſome haue ſaid, that hee ſhall not bee Tenant by the Curteſie, vnleſſe the childe which hee hath by his wife bee heard crie; for by the crie it is proued that the childe was borne aliue. Therfore Quære.

CRiſt *feme ſeiſie.* And firſt of what ſeiſin a man ſhall be Tenant by the Curteſie. (e) There is in Law a twofold ſeiſin, viz. a ſeiſin in Deed, and a ſeiſin in Law, whereof more ſhall bee ſaid, Sect. 468. and 681. And here Littleton intendeth a ſeiſin in Deed if it may bee attained vnto. (f) As if a man dieth ſeiſed of lands in Fee ſimple or Fee taile generall, & theſe lands deſcend to his daughter, and ſhe taketh a husband and hath iſſue, and dieth before any entrie, the husband ſhall not bee Tenant by the Curteſie, and yet in this caſe ſhe had a ſeiſin in Law, but if ſhe or her husband had during her life entred, he ſhould haue beene Tenant by the Curteſie. (g) A man ſeiſed of an Aduowſon or rent in fee hath iſſue a daughter, who is married, and hath iſſue, and dieth ſeiſed, the wife before the rent became due, or the Church became void, dieth, ſhee had but a ſeiſin in Law, and yet he ſhall be Tenant by the Curteſie, becauſe hee could by no induſtrie attaine to any other ſeiſin, Et impotentia excuſat legem. But a man ſhall not bee Tenant by the Curteſie of a bare right, title, vſe, or of a reuerſion or remainder expectant vpon any eſtate of Freehold, vnleſſe the particular eſtate bee determined or ended during the couerture.

(e) F.N.B. 19

(f) 1. Mar. Dyer 55.

(g) 7.E.3.66. 3.H.7.3.

At the Coronation of King R. 2 ſaith the Record, (h) Iohannes Rex Caſtiliæ & Legionis, Dux Lancaſtriæ, corā dicto domino rege & conſilio ſuo comparens clamauit vt comes Leiceſtriæ officiū Seneſchalciæ Angliæ, & vt Dux Lancaſtriæ ad gerendū principalem gladiū domini Regis vocat' Curtana die coronationis eiuſdem regis, & vt comes Lincoln' ad ſcindendū & ſecandū coram ipſo domino Rege ſedente ad menſam dicto die coronationis, & quia fact' diligenti examinatione corā peritis de conſilio regis de præmiſſis ſatis conſtabat eidē conſilio, quod ad ipſū ducē tanquā tenentem per legē Angliæ poſt mortem Blanchiæ quondā vxoris ſuæ pertinuit officia prædict' prout ſuperius clamabat exercere, conſideratum fuit per ipſum regem & conſilium ſuum prædictum, quod idē Dux officia prædicta per ſe & ſufficientes deputatos ſuos faceret & exerceret, & feoda debita in hac

(h) Proceſſ. facta ad Coronationem R. 2. Anno regni ſui primo Rot. clauſ. m. 45.

v: Speed Cro: 603: 6, er

hac parte obtineret. Qui quidem Dux officium Seneſchalciæ prædict' perſonaliter adimpleuit, &c. And euerie man that claimed to hold by Grand Serianty to doe any ſeruice to the King at his Coronation, exhibited his petition to the ſaid Duke as Steward of England, who vpon hearing the praces either allowed or diſallowed the ſame. v. 107. b.

v 107 b.

Rot. Patent. Ann. 20 H. 6. In Letters Patents made by King H. 6. to Richard Earle of Salisbury you ſhall finde this clauſe, Quod chariſſimus conſanguineus noſter Richardus nunc comes Sarum qui Aliciam filiam & hæredem Thomæ nuper comitis Sarum adhuc ſuperſtitem duxit in vxorem, & cum eadem Alicia prolem tempore mortis prædicti Thomæ habuit & habet ſuperſtitem de præſenti, eoque pretextu idem Richardus nunc comes Sarum nomen, ſtatum & honorem comitis Sarum, &c. habet, & pro tempore vitæ ſuæ de jure prætextu præmiſſorum habere debet. The name of the iſſue which the ſaid Richard Earle of Salisbury had by the ſaid Alice was Richard, who married with Anne the ſiſter and heire of Henry Beauchamp Earle of Warwicke, who was Earle of Warwicke to him and to his heires, and Duke of Warwicke to him and to the heires males of his body. And Richard the ſonne having then no iſſue by his wife, King H. 6. in 27. yeare of his reigne granted to him that he ſhould be Earle of Warwicke, Licet ipſe & prædicta Anna exitum inter eos ad præſens non habent. Theſe and many more I haue read concerning this matter, and only ſay to the reader, Vtere tuo judicio, nihil enim impedio.

Rot. Patent. de anno 27. H. 6. m.

(i) Vid. 1. E. 3. 6. 5 E. 3. 26. (1) If an eſtate of Freehold in Seignories, Rents, Commons, or ſuch like be ſuſpended, a man ſhall not be Tenant by the Curteſie, but if the ſuſpenſion be but for yeares, hee ſhall bee Tenant by the Curteſie. As if a Tenant make a Leaſe for life of the tenancie to the Seignorelle, who taketh a husband, and hath iſſue, the wife dieth, hee ſhall not be Tenant by the Curteſie; but if the Leaſe had beene made but for yeares he ſhall be Tenant by the Curteſie.

¶ *En Fee ſimple ou en Fee taile generall, ou ſeiſie come heire de la taile ſpeciall & ad iſſue per la feme male ou female.* Secondly, of what eſtate. If lands be giuen to a woman and to the heires males of her body, ſhe taketh a husband and hath iſſue a daughter and dieth, ſhe ſhall not be Tenant by the Curteſie, becauſe the daughter by no poſſibilitie could inherit the mothers eſtate in the land, and therefore where Littleton ſaith, iſſue by his wife male or female, it is to be vnderſtood, which by poſſibilitie may inherit as heire to her mother of ſuch eſtate. Littleton himſelfe explaneth this by expreſſe words, Cap. Dower fo. 10. Sect. 52. And therefore if a woman tenant in taile generall maketh a Feoffment in Fee, and taketh backe an eſtate in Fee; and take a husband and hath iſſue, and the wife dieth, the iſſue may in a Formedon recouer the land againſt his father, becauſe he is to recouer by force of the eſtate taile as heire to his mother, and is not inheritable to his father.

W. 2. ca. 1. Litt. ca. Dower fol. 10. ſect. 52. Paines caſe lib. 8. fol. 34.

¶ *Et ad iſſue.* 3. The time of having the iſſue. 4. What kinde of iſſue. If a man ſeiſed of Lands in Fee hath iſſue a daughter, who taketh husband and hath iſſue, the father dieth, the husband enter, hee (a) ſhall be Tenant by the Curteſie, albeit the iſſue was had before the wife was ſeiſed. And ſo it is albeit the iſſue had died in the life time of her father before any deſcent of the land, yet ſhall he be Tenant by the Curteſie. If a woman (b) ſeiſed of lands in Fee taketh husband, and by him is big with childe, and in her trauell dieth, and the childe is ripped out of her body aliue, yet ſhall he not be Tenant by the Curteſie, becauſe the childe was not borne during the marriage nor in the life time of the wife, but in the meane time the Land deſcended, and in pleading hee muſt alleage, That hee had iſſue during the marriage.

(a) Old tenures 21. H. 3. tit. Dower 198.

(b) Vide Paines caſe vbi ſupra.

If the wife be (c) deliuered of a Monſter which hath not the ſhape of mankinde, this is no iſſue in the Law, but although the iſſue hath ſome deformitie in any part of his body, yet if he hath humane ſhape this ſufficeth. Hii qui contra formam humani generis conuerſo more procreantur (vt ſi mulier monſtruoſum vel prodigioſum fuerit enixa) inter liberos non computentur, partus tamen cui natura aliquantulũ ampliauerit vel diminuerit non tamen ſuperhabundantur, vt ſi ſex digitos vel niſi quatuor habuerit, benè debet inter liberos commemorari. Si inutilia natura reddidit membra, vt ſi curuus fuerit aut gibboſus vel membra tortuoſa habuerit, non tamen eſt partus monſtruoſus, item puerorum alii ſunt maſculi, alii fœminæ, alii hermophraditæ, hermophradita tam maſculo quam fœminæ comparatur ſecundum prævaleſcentiam ſexus incaleſcentis.

(c) Bract. lib. 5. 437. 438. Britt. ca. 66. & ca. 83. Fleta lib. 1. c. 5. & lib 6. cap. 54.

If the iſſue be borne deafe, or dumbe, or both, or be borne an Ideot, yet it is a lawfull iſſue to make the husband Tenant by the Curteſie and to inherit the land.

¶ *Oyes ou viue.* If it bee borne aliue (d) it is ſufficient, though it bee not heard cry; for peraduenture it may be borne dumbe. And this is reſolued clearly in Paines caſe vbi ſupra. For the pleading (as hath beene ſaid) is, That during the marriage hee had iſſue by his wife, and vpon that point the triall is to bee had, and vpon the euidence it muſt be proued, that the iſſue was aliue, for mortuus exitus, non eſt exitus, ſo as the crying is but a proofe that the childe was borne aliue, and ſo is motion, ſtirring, and the like. And it is ſaid by an ancient Author (e) that it was ordained in the reigne of King H. 1. Que toutes que ſuruequiſ-

(d) 28. H. 8. 25. Dyer. Paines caſe vbi ſupra.

(e) Mirror cap. 1. ſect. 3.

ſent

ſent lour femes dount ils vſſent conceiue tenuiſſent les heritages lour femes pur lour vies.

By the cuſtome of Gauelkinde (f) a man may be Tenant by the curteſie without hauing of any iſſue.

(f) 9.E.3.38. 16.E.3. aid.129. Stat. de Conſuetudinibus Kanciæ.

¶ *Soit liſſue apres mort ou en vie.* And therefore (g) if a woman Tenant in taile generall taketh a husband and hath iſſue, which iſſue dieth and the wife dieth without any other iſſue, yet the husband ſhall be tenant by the Curteſie albeit the eſtate in taile be determined, becauſe he was intitled to be tenant Per legem Angliæ before the eſtate in taile was ſpent, and for that the land remaineth. But if a woman maketh a gift in taile and reſerue a rent, to her and to her heires, and the Donor taketh husband and hath iſſue, and the Donee dieth without iſſue, the wife dieth, the husband ſhall not be tenant by the curteſie of the Rent, for that the rent newly reſerued is by the act of God determined and no state thereof remaineth. But (h) if a man be ſeiſed in fee of a Rent and maketh a gift in taile generall to a woman, ſhe taketh husband and hath iſſue, the iſſue dieth, the wife dieth without iſſue, he ſhall be tenant by the Curteſie, of the rent, becauſe the rent remaineth. The diuerſitie appeareth.

(g) 11.H.3. tit. Dower. 198. Paines caſe, vbi ſup.

(h) Brooke tit. per le Curteſie 86. 10.E.3.27.

¶ *Si la feme deuie, le baron tiendra la terre, &c.* Foure things doe belong to an eſtate of Tenancie by the curteſie, viz. Marriage; Seiſin of the wife; Iſſue, and death of the wife. But it is not requiſite, that theſe ſhould concurre all together at one time: And therefore if a man taketh a woman ſeiſed of lands in fee and is diſſeiſed, and then haue iſſue, and the wife dye, he ſhall enter and hold by the Curteſie. So if he hath iſſue which dieth before the deſcent, as is aforeſaid.

And albeit the ſtate be not conſummate vntill the death of the wife, yet the ſtate hath ſuch a beginning after iſſue had in the life of the wife as is reſpected in Law for diuers purpoſes.

Firſt, after iſſue had, he ſhall doe homage alone, and is become tenant to the Lord, and the auowry ſhall be made only vpon the husband in the life of the wife, as ſhall be ſaid hereafter when we come to the apt place. Secondly, if after iſſue (i) the husband maketh a Feoffment in fee, and the wife dieth, the Feoffee ſhall hold it during the life of the husband, and the heire of the wife ſhall not during his life recouer it in Sur cui in vita; for it could not be a forfeiture, for that the eſtate, at the time of the feoffment, was an eſtate of Tenancie by the Curteſie intiate and not conſummate. And it is adiudged in 29.E.3. that the tenant by the Curteſie cannot claime by a Deuiſe, and waiue the ſtate of his tenancie by the Curteſie, becauſe ſaith the booke the Freehold commenced in him before the Deuiſe for terme of his life.

(i) 34.E.2. Cui in vita 13. 2.E.2. Cui in vita 26. 10.E.3.12. Dier 21. Eliz. 363.

29.E.3.fo.27.

¶ *Et eſt appel tenant per le Curteſie Dengleterre, pur ceo qne neſt vſe en auter realme forſque tant ſolement en Engleterre.*

¶ *Per le Curteſie.* In Latine Per legem Angliæ.

¶ *Tant ſolement en Engleterre.* It is alſo vſed within the Realme of Scotland, and there it is called Curialitas Scotiæ. And ſo it is in the Realme of Ireland.

¶ *Et aſcuns ount dit, que il ne ſerra tenant per le Curteſie, ſi non que lenfant que il ad per ſa feme ſoit oye crie, car per le crie eſt proue que le enfant fuit nee vife.* Our Author hauing deliuered his owne opinion before, viz. Oyes ou vife, now he ſheweth the opinions of others: for ſo it is ſaid in the (k) ſtatute De tenentibus per legem Angliæ: and of that opinion is Glanuill (l) lib.7.cap 8. Bracton lib.5.tract.5.cap.30. Britton ca. 50. fol.132. Fleta lib.6.ca.50.&c. But the reaſon is againſt their opinion; For by the cry it is proued, &c. ſo as it is but an euidence to proue the life of the enfant.

(k) Vet.mag. car.part.2. fol.70.

(l) Glanuill lib.7. cap.8. Bract.lib.5.tract.5. c.30. Britton cap.50.fo.132. Fleta lib.6.cap.54.

¶ *Aſcuns ont dit.* By theſe and the like ſpeeches our Author intendeth that the point had beene controuerted, but thereby, except it be in this ſection where formerly he deliuered his opinion as hath beene ſaid, hee tacitely inſinuateth his owne iudgement which in all the reſt holdeth for good Law and warranted by good Authorities throughout his three bookes, which kinde of ſpeech and the like I haue collected together, as it appeareth by the ſections in (m) the margent.

(m) Sect.40.119.132.136. 137.138.141.145.148. 156.170.179.192.202. 227.234.269.336.339. 357.400.435.436.440. 443.460.462.478.501. 503.506.522.523.524. 534.576.601.633.634. 640.642.643.644.646. 658.675.689.721.723. 726.730.731.733.734. 7.E.3.6.

¶ *Ideo quære.* This Quære is not in the originall edition of Littleton, and therefore to be reiected.

And ſome haue ſaid that in diuers caſes a man ſhall by hauing of iſſue be tenant by the curteſie where a woman ſhall not be endowed. And therefore they ſay if lands be giuen to two women and to the heires of their two bodies begotten, and one of them take husband & haue iſſue and die, the inheritances being ſeuerall the husband ſhall be tenant by the Curteſie, as it is adiudged 7.E.3. and in other bookes (n) this iudgement is cited and allowed. But certaine it is, That if land be giuen to two men and to the heires of their two bodies begotten, and the one taketh wife and dieth, ſhe ſhall not bee endowed, for no eſtate in the land is altered by that marriage. But I leaue the Reader to his owne opinion, or rather to ſuſpend it vntill he come

(n) 17.E.3.51. *Lit Lit. ſec. 45*

to

to the proper place in the next Chapter. If lands holden of the King by Knights ſeruice in capite deſcend to a woman, and after office found ſhe intrude and taketh husband and hath iſſue. In this caſe the husband ſhall be tenant by the Curteſie; and yet if the heire male after office in the like caſe intrudeth and taketh wife, his wife ſhall not be endowed, for ſo it is prouided by the Statute of Prærogatiua regis, cap. 13. that in that caſe there accrue to the heire no freehold, nor dower to the wife, which by interpretation is as much to ſay, that the heire ſhall haue no freehold as to this reſpect to giue any dower to his wife. If a man marrie the niece of the King by licence and hath iſſue by her, and after lands deſcend to the niece and the husband enter, the niece dieth, he ſhall be tenant by the Curteſie of this land, and the King vpon any office found ſhall not euict it from him, becauſe by the marriage, the niece was enfranchiſed during the couerture. But if a free woman marrie the Villaine of the King by licence, and lands deſcend to the Villaine, the Villaine dieth, the wife ſhall not be endowed, but vpon an office found the King ſhall haue the land, for the Villaine remained ſtill a Villaine to the King. A woman (n) taketh husband, and hath iſſue, lands deſcend to the wife, the husband enters, and after the wife is found an Ideot by office, the lands ſhall be ſeiſed by the King; for the title of the tenancie by the Curteſie, and of the King begin at one inſtant, and the title of the King ſhall be preferred. A man ſhall be Tenant by the Curteſie of a Caſtle (o) which ſerueth for the publike defence of the Realme, but a woman ſhall not be endowed thereof, as ſhall be ſaid more at large hereafter.

A man ſhall be Tenant by the Curteſie of a Common ſans nomber, but a woman ſhall not be endowed thereof, becauſe it cannot be diuided. A man ſhall be tenant by the Curteſie (p) of a houſe that is Caput Baroniæ, or Comitatus: But it appeareth by 4. H. 3. Dower 180. that a woman ſhall not be endowed of it. For the Law reſpecteth Honour and Order. A man is entitled to be tenant by the Curteſie, and maketh a feoffment in fee vpon condition, and entreth for the condition broken, and then his wife dieth, he ſhall not be tenant by the Curteſie, becauſe albeit the ſtate giuen by the feoffment, be conditionall, yet his title to be tenant by the Curteſie was inclufiuely abſolutely extinct by the feoffment, for the condition was not annexed to it. As if the Lord diſſeiſe the Tenant, and maketh a Feoffment in fee of the land vpon condition, and entreth for the condition broken, yet the Seigniorie is extinct, for that was inclufiuely extinct by the Feoffment. See more of Tenant by Curteſie, Sect. 52.

Prærog. Regis ca. 13.

33. E. 3. tit. Trauers 36.

v. Rot. 4. fol. 55. in caſe de les Wardens communalty de Ladies in London.

(n) Pl. Com. Dame Hales caſe 263. b.

(o) Magna Carta 30. E. 1. Dower 81. b. 17. H. 2. Dower. Bract. lib. 2. fol. 46. & 314.

(p) 4. H. 3. Dower 180. Bract. fol. 93. Fleta lib. 5. cap. 23. 2. E. 2. Dower 123. 3. E. 2. Dower B. 102. 9. H. 7. 1. 30. E. 3. v. 2. (1).

Chap. 5. Sect. 36.

Dower.

(q) Lib. rub. cap. 70. Glanuill lib. 6. cap. 1. Bract. lib. 2. fol. 92. Britt. cap. 101. Fleta lib. 5. cap. 22.

v. 5. 53 car la eſtat de tenta ſpec: ſans endow.

ms v. 8. 39. a. tout ſolum de Joinct ne ſans endow &c.
v. 2. §. 44 lou 2 ſeuls claime dower de m̃ le vir

Tenant en Dower. Tenens in dote. Dos, Dower in the Common Law (q) is taken for that portion of Lands or Tenements which the wife hath for terme of her life of the Lands or Tenements of her husbands after his deceaſe for the ſuſtenance of her ſelfe, and the nurture and education of her Children. Propter onus matrimonii & ad ſuſtentationem vxoris & educationem liberorum cum fuerint procreati ſi vir præmoriatur: & hoc proprie dicitur Dos mulieris ſecundum conſuetudinem Anglicanam. And Dos is deriued ex donatione, & eſt

Tenant en Dower eſt lou home eſt ſeiſie de certaine terres ou Tenements en fée ſimple, taile generall, ou come heire de le taile ſpeciall, & prent feme, & deuie, la feme apres le deceſſe de la baron ſerra endow de la tierce part de tiels terres & tenements que fueront a ſa Baron en aſcun temps du-

Tenant in Dower is where a man is ſeiſed of certaine Lands or Tenements in Fee ſimple, Fee taile generall, or as heire in Speciall taile, and taketh a wife, and dieth, the wife after the deceaſe of her husband ſhall bee endowed of the third part of ſuch lands and tenements as were her husbands at any time during the couerture,

rant le couerture, a auer & tener a meſme la feme en ſeueraltie per metes & bounds pur terme de ſa vie, le quel el auoit iſſue per ſa baron ou ne-my, & de quel age que la feme ſoit, iſſint que el paſſe lage de neuf ans al temps de le mort ſa baron, car il couient que el ſoit paſſe lage de neuf ans al temps del mort ſa baron, ou autrement el ne ſerra my endow.

To haue and to hold to the ſame wife in ſeveralty by metes and bounds for terme of her life whether ſhee hath iſſue by her huſband or no, and of what age ſoeuer the wife be, ſo as ſhe be paſt the age of nine yeares at the time of the death of her huſband, for ſhe muſt be aboue nine yeares old, at the time of the deceaſe of her husband, otherwiſe ſhe ſhal not be endowed.

quaſi donarium, becauſe either the Law it ſelfe doth (without any gift) or the husband himſelf giueth it to her, as ſhal be ſaid hereafter. And at this day Dos or Dower is not taken by the profeſſors of the Common Law, either for the land which the wife bringeth with her in marriage to her husband, for then it is either called in Frankmarriage or in marriage, as hath beene ſaid, nor for the portion of mony or other goods or chatels, which ſhe bringeth with her in marriage, for that is called her marriage Portion. And yet of ancient time (r) Dos mulieris, the Dower or Dowrie of the Woman was alſo applied to them. But it is commonly taken for her third part which ſhe hath of her husbands lands or tenements.

(r) Britton. cap. 101. Bracton. lib. 2. fo. 92. Glanuil. lib. 6. ca. 1. lib. 7. ca. 1. Lib. 2. fol. 93. Bingham's caſe. 4. H. 3. dower 179.

In Domeſday, Dos is called Maritagium.

To the conſummation of this Dower three things are neceſſary, viz. marriage, ſeiſin and the death of her husband.

Dos (l) the very name doth import a freedome, for the Law doth giue her therewith many freedomes; Secundum conſuetudinem regni mulieres viduæ, &c. debent eſſe quietæ de tallagiis, &c. And tenant in Dower ſhall not be diſtreyned for the debt due to the King by the husband in his life time in the lands which ſhee held in Dower. And other priuileges ſhee hath; Of all which Ockam yeelds the reaſon, Doti eius parcatur quia præmium pudoris eſt.

(l) Claus. 11. H. 4. m. 17. Regiſt. 142. 143. F.N.B. 150. Ockham fol. 40.

¶ *Lou home.* If the husband bee an alien (t) the wife ſhall not bee indowed. So if the husband be the Kings Villaine, the wife ſhall not be endowed, (as hath beene ſaid) but if the husband be a Villaine to a common perſon, the wife ſhall be endowed if ſhee be intitled to Dower before the entry of the Lord. And ſo if a free man take a neife to wife and dieth ſhee ſhal be endowed. The wife of an Ideot, non Compos mentis, outlawed, or attainted of felony or treſpaſſe, attainted of hereſie, præmunire, or the like, ſhall be endowed. But if the husband bee attainted of treaſon, albeit it be treaſon done after the title of Dower, ſhe ſhall not be endowed, as ſhall be ſaid hereafter.

(t) Bract. fol. 298. 19. H. 2. dower 171. Dame Hales caſe. 13. E. 3. dower Statham. 13. E. 1. tit. dower.

30. b. t

¶ *Seiſie.* Here this word (ſeiſed) extendeth it ſelfe as well to a ſeiſon in law, or a ciuill ſeiſon, as to a ſeiſon in deed, which is a naturall ſeiſon: but ſeiſed he muſt be either the one way or the other during the couerture. For a woman ſhall bee indowed of a ſeiſon in Law. As where Lands or Tenements deſcend to the husband, before entry, hee hath but a ſeiſon in Law, and yet the wife ſhall be endowed, albeit it bee not reduced to an actuall poſſeſſion, for it lieth not in the power of the wife to bring it to be an actuall ſeiſon, as the husband may bee of his wiues land, when he is to be tenant by courteſie, which is worthy the obſeruation. And yet of euery ſeiſon in Law, or actuall ſeiſon of Lands or Tenements, a woman ſhall not be endowed. For example, If there bee grandfather, father, and ſonne, and the grandfather is ſeiſed of three Acres of Land in fee, and taketh wife and dieth, this Land deſcendeth to the father, who dieth either before or after entry, now is the wife of the father dowable. The father dieth and the wife of the grandfather is endowed of one acre and dieth, the wife of the father ſhall be endowed onely of the two acres reſidue, for the Dower of the grandmother is paramount the title of the wife of the father, and the ſeiſon of the father which deſcended to him (be it in law or actuall) is defeated, and now upon the matter the father had but a reuerſion expectant upon a freehold, and in that caſe, Dos de dote peti non debet; although the wife of the grandfather dieth liuing the fathers wife. And here note a diuerſity (w) betweene a Deſcent and a Purchaſe. For in the caſe aforeſaid, if the grandfather had infeoffed the father, or made a gift in taile vnto him, there in the caſe aboueſaid, the wife of the father, after the deceaſe of the grandfathers wife ſhould haue beene endowed of that part aſſigned to the grand-

(u) 43. E. 3. 32. 45. E. 3. 13. 9. E. 3. 4. F.N.B. 149. 8. E. 3. tit. Aſſ. 393. 19. E. 2. dower 170. 23. E. 3. dower 30.

(w) 5. E. 3. tit. Voucher 243. Paris caſe. 9. E. 3. 4.

mother, & the reason of this diuersity is, for that the seison that descended after the decease of the grandfather to the father is auoyded by the indowment of the grandmother whose title was consummate by the death of the grandfather. But in the case of the purchase or gift that toke effect in the life of the grandfather (before the title of Dower of the grandmother was consummate) is not defeated but onely quoad the grandmother, and in that case there shall be Dos de dote. And yet there is another diuersity (x) where the wife of the father is first indowed, and where the wife of the grandfather, for in the same case after the decease of the grandfather and father the sonne entreth and endoweth his mother of a third part, against whom the grandmother recouereth a third part and dieth, the mother shall enter againe into the land recouered by the grandmother, because she had in it an estate for terme of her life, and the estate for the life of the grandmother is lesser in the eye of Law, as to her than her owne life. Also the husband (y) may be seised in his Demesne, as of fee absolutely, yet the woman shall not be endowed, as she shall not be endowed both of the land giuen in exchange, and of the land taken in exchange, and yet the husband was seised of both, but shee may haue her election to be endowed of which she will.

424.

(x) 8.E.3.tit.Ass.393. 13.R.2.Dower.55. 21.E.3.5.8.E.33. 7.H.6.4.

(y) 6.E.3.50.F.N.B.149.

Also of a seison for an instant a woman shall not bee endowed, As if Cestuy que vse (z) after the Statute of 1.R.3. and before the Statute of 27. H. 8. had made a feoffment in fee, his wife should not be endowed.

(z) 27.H.8.23.F.N.B. 27.H.3.Dower 192.

Likewise if two ioyntenants be in Fee, and the one maketh a feoffment in fee, his wife shall not be endowed. And so if the Conusee of a fine doth grant and render the Land to the Conusor, the wife of the Conusee shall not be endowed, for it is not possible that the husband could haue endowed his wife of such an estate as the vsuall pleading is, Lib. intrat. 225. Quia dicit quod W. quondam vir suus nunquam fuit seisitus de tenementis prædictis de tali statu ita quod eandem A. inde dotasse potuit.

¶ *Des terres ou tenements.* Of a Castle that is maintained for the necessary defence of the Realme a woman shall not be endowed, because it ought not to be diuided, and the publike shall bee preferred before the priuate. But of a castle that is onely maintained for the priuate vse and habitation of the owner, a woman shall bee endowed. And so it was adiudged in the Court of (a) Common pleas, where in a writ of Dower the demand was De tertia parte Castri de Hilderker in Comitatu Northumb. And the Statute of Magna Charta cap. 7. whereby it is prouided, nisi domus illa sit Castrum, is to bee vnderstood, a Castle maintained for the necessary and publike defence of the Realme. And this agreeth with ancient Records, (b) (albeit in the argument of the said case they were not vouched) the effect whereof be, Non debent mulieribus assignari in dotem castra quæ fuerunt virorum suorum, & quæ de guerra existunt, vel etiam homagia & seruicia aliquorum de guerra existent. Wherein it is to be obserued, That the Law is not satisfied with the names of things, or nominatiues, but with things reall and substantiall. But of the principall Mansion, or capitall Messuage, the wife shall be indowed, (c) si non sit caput Comitatus, siue Baroniæ, for the honour of the Realme, or (as hath beene said) a Castle for the publike defence of the Realme. And so are the old bookes to be intended, as it was resolued Tr. 17. Eliz. in the Court of Common Pleas, which I heard and obserued. And of an estate taile in lands determined, a woman shall bee indowed in the like manner and forme as a man shall bee Tenant by the Curtesie mutatis mutandis.

Vide Sect. 242.

(a) Pasc. 23. Eli. in Com. Banco. Bract. fol. 96. Brit. ca. 103. Flet. l. 5. c. 23. 30. E. 1. tit. Dower 81. b. 30. E. 1. Vouch. 298. 17. H. 3. 192. 8. H. 3. Dower 196. 8. H 3. ib. 194.

(b) Pat. 1. E. 1. part. 1. m. 17. Esch. 4. E. 1. nu. 88.

(c) Bract. l. 2. f. 53. Brit. c. 103. Fleta lib. 5. ca. 22. Trin. 17. El. in com. Banco.

¶ *En fee simple, fee taile general, &c.* If a man bee Tenant in fee taile generall, (d) and make a feoffment in fee, and taketh backe an estate to him and to his wife, and to the heires of their two bodies, and they haue issue, and the wife dieth, the husband taketh another wife, and dieth, the wife shall not be endowed, for during the couerture, he was seised of an estate taile speciall, and yet the issue which the second wife may haue, by possibility may inherit.

(d) 41. E. 3. 30. 44. E. 3. 26. 30. H. 8. Dyer 41.

The same law it is, if in this case he had taken backe an estate in fee simple, and after had taken wife and had issue by her; yet she shall not be indowed, for that the fee simple is banished by the remitter, and her issue hath the land by force of the entaile. But in that case the tenant cannot plead, that the husband was neuer seised of such an estate whereof the demandant might be endowed, but he must plead the speciall matter.

30. H. 8. Dyer 41.

¶ *Et prem feme.* If a man so seised as is aforesaid, taketh an Alien to wife, and dyeth, she shall not be indowed: but if the King take an alien borne and dieth, shee shall bee indowed by the law of the Crowne. And Edmond the brother of King Edward the first, married the Queene of Navarre, and died, and it was resolued (e) by all the Iudges, that shee should be indowed of the third part of all the lands whereof her husband was seised in fee.

(e) Rot. Parl. 26. E. 1. Rot. 8 vel 8 Rex was but a minor the Queene

If a Iew borne in England taketh to wife a Iew borne also in England, the husband is conuerted to the Christian faith, purchaseth lands, and inkeepeth another, and dieth, the wife

brought a writ of Dower, and was barred of her Dower, and the reason yelded in the record (f) is this. Quia verò contra iustitiam est, quod ipsa dotem petat vel habeat de Tenemento quod tulit viri sui ex quo in conuersione sua noluit cum eo adhærere & cum eo conuert.

¶ *Del tierce part de tiels Terres & Tenements per seueraltie per metes & bonds.* Albeit of many inheritances that be entire, wherof no diuision can be made by metes and bonds, a woman cannot be endowed of the thing it selfe, yet a woman (g) shall be endowed thereof in a special and certaine manner. As of a Mill a woman shal not be endowed by Metes and Bonds, nor in common with the heire, but either she may be endowed of the third tolle dish, or de integro molendino per quemlibet 3. mensem. And so of a Milleine, (h) either the third dayes worke, or euerie third weeke or moneth. A woman shall bee indowed of the third part of the profit of stallage, of the third part of the profits of a faire, of the third part of the profits of the office of the Marshalsie, of the (i) third part of the profits of the keeping of a Parke, Of the third part of the profit of a doue house, & likewise of the third part of a Piscary, (k) viz. tertium piscem, vel tactum retis tertium. Of the third presentation to an Aduowson. A writ of Dower lieth de 3 parte exituum prouenientium de custodia gaolæ Abathiæ Westm. And herewith agreeth reuerend antiquitie, De (l) nullo quod est sua natura indiuisibile, & secationem siue diuisionem non patitur nullam partem habebit, sed satisfaciat ei ad valentiam. Of the third part of profits of Courts, (m) fines, heriots, &c. Also a woman shall be endowed of tithes. And the surest indowment of tithes, is of the third Sheafe, for what Land shall be sowne is vncertaine.

But in some cases of lands and tenements which are diuisible, and which the heire of the husband shall inherit, yet the wife shall not be endowed. As if the husband (n) maketh a lease for life of certaine lands, reseruing a rent to him and his heires, and he taketh wife and dieth, the wife shal not be endowed, neither of the reuersion (albeit it is within these words Tenements) because there was no seisin in deed or in law, of the freehold nor of the rent, because the husband had but a particular state therein, and no fee simple. But if the husband maketh a lease for yeares, reseruing a rent, and taketh wife, the husband dieth, the wife shall be endowed of the third part of the reuersion by metes and bonds, together with the third part of the rent, and execution shall not cease during the yeares. And herewith agreeth the common experience at this day. But if the husband maketh a gift in taile reseruing a rent to him and to his heires, and after the Donor taketh wife and dieth, the wife shall bee endowed of this rent, because it is a rent in fee, and by possibility may continue for euer.

Of a Common certaine a woman shall be endowed, but of a Common sauns nomber en gross she shall not be endowed, as hath beene said before. And so of a rent seruice, rent charge, and rent secke, she shall be endowed: but of an annuitie that charge th onely the person, and issueth not out of any lands or tenements, she shall not bee endowed. But if the freehold of the rents, common, &c. were suspended before the couerture, and so continue during the couerture, she shall not be endowed of them. If after the couerture the husband doth extinguish them by release or otherwise, yet she shall be endowed of them; for as to her dower they in the eye of the Law haue contynuance.

If the wife bee intitled to haue dower of three acres of marsh, euery one of the value of twelue pence, the heire by his industry and charge maketh it good Meadow, euery acre of the value of ten shillings, the wife shall haue her dower according to the improued value, and not according to the value as it was in her husbands time: for her title is to the quantitie of the land, viz. one iust third part.

And the like law it is, if the heire improue the value of the Land by building: And on the other side if the value be impaired in the time of the heire, she shall be endowed according to the value at the time of the assignement, and not according to the value as it was in the time of her husband.

¶ *Ascuns temps durant le couerture.* For the better vnderstanding whereof it is to be knowne, that (as hath beene said) to dower three things doe belong, viz. marriage, seisin, and the death of the husband. Concerning the seisin, it is not necessarie that the same should continue during the couerture, for albeit the husband alieneth the lands or tenements, or extinguisheth the rents or commons, &c. yet the woman shal be endowed. But it is necessary that the marriage doe continue, for if that be dissolued the dower ceaseth, vbi nullum matrimonium ibi nulla dos. But this is to be vnderstood when the husband and wife are diuorced à vinculo matrimonii, as in case of precontract consanguinitie, affinitie, &c. and not à mensa & thoro only, as for adulterie. And yet it is said, that if the assignement of dower ad ostium Ecclesiæ be specified, viz. That notwithstanding any diuorce shall happen, yet that shee shall hold it for her life, that this is good.

If the wife elope (o) from her husband, that is, if the wife leaue her husband, and goeth away & tarrieth with her adulterer, she shall lose her dower vntil her husband willingly with-

(f) Dorſ. claus. 18. H. 3. m. 17. Jenny fo. 229, 230. ms. excerpt. Co. Lo. Baron. Finch L. fo. 87.

(g) Bract. lib. 2. fo. 97. b. 23 H. 3. tit. Aſſ. 435. F. N. B. 149. 45. E. 3. Dower 50.

(h) 2 H. 6. 11. Bract. lib. 2. fo. 97. Brit. 247. 11. E. 3. tit. Dower 85. 15. E. 3. ibid. 81. 1. E. 3. 57. F. N. B. 8. k.

(i) 3. E. 2. Tr. 233. 26. E. 3. 58. 45. P. 3 dower 50.

(k) Bract. 98. 108. Brit. 147. Flet. lib. 5. ca. 23. 17. Ed. 2. dower 104. 163. 17. Ed. 3. Quar. Imp. 154. 7. E. 3. 7.

(l) Bract. 97. Brit. 140. 147.

(m) Lib. Intr. Iudgement. 18. fo. 230. Lib. 11. fo. 25. 26. Harpers case.

(n) 28. Aſſ. 3. 8. R. 2. dower 184. 1. E. 6. dow. E. 89. acr.

Vid. 1. E. 6. E. 89.

vid. Dort. E. Stud. diff. betw. rents & Annuities. D. 1. C. 39. 2. R. 4. fo. 48, 9, 10 Lilly case

Lib. 7. fo 38. Lillingstons case. Lib. 6. fo. 78. Leig. Aburganies case.

V. 30. E. 1. Vouch. 298.

Bract 92. Brit. cap. 101. Brit. Cap. eodem.

(o) Wit. ca. 34. Lib. Intr. 224. Fleta lib. 5. c. 22. Br. c. 109. Mirror, ca. 5. Sect 5.

out coertion ecclesiasticall be reconciled vnto her, and permit her to cohabit with him, all which is comprehended shortly in two Hexameters, Sponte virũ mulier fugiens, & adultera facta, Dote sua careat, nisi sponsi sponte retracta. And (p) if she goeth willingly with or to the auowtrer, this is a departure and a tarrying, albeit she remaineth not continually with the auowtrer, or if she tarrieth with him against her will, or if he turne her away, or if she cohabit with her husband, by the censures of the Church, in all these cases she loseth her dowrie. But see notable matter hereof in the exposition vpon the Statute of W. 2 cap. 34.

(p) 3.E.3.2.6.E.3.29. 9.E.3.39.19.E.3.Dower. 94.43.E.3.19. Vid.Fitz.N.B.150.h. 8.E.2.Dower 153.

¶ *En seueraltie per metes & bonds.* And yet in some cases where the husband was sole seised, the wife shall not be endowed in seuerally by metes & bonds. As for example, (q) If a man seised of lands in fee, took a wife, & infeoffed eight persons, a Writ of Dower was brought against these eight persons, and two confesse the Action, and the other six pleade in barre, and descend to issue, the demandant shall haue iudgement to recouer the third part of two parts of the land, in eight parts to be diuided, & after the issue being found for the demandant against the six, the demandant shall haue iudgement to recouer against them the third part of six parts of the same Lands, in eight parts to be diuided, which is worthie the obseruation. But of this more shall be afterwards said in this Chapter.

(q) M.2.& 3 Eliz. Dier 257.b. 10.Ass.p.2.17.E.3.4. Tr.10.H.5.Rot.447.

But regularly Littletons words are to be intended, where the husband was sole seised, for where he was seised in Common, there she cannot be endowed by metes and bonds, as it appeareth in this Chapter, Sect. 44. Nota, the endowment by metes and bonds, according to the common right, is more beneficiall to the wife, than to be endowed against common right, for there she shall hold the land charged in respect of a charge made after her title of Dower.

26.E.3.Dower.133. 10.E.3.31. 17.E.2.Dower.164. 19 E.3.qua.Imp.154. 12.E.4.2. 18.H.6.27.per Paston.

¶ *Le quel el auoit issue per sa baron ou nemy.* Herein the tenant in Dower, as in many other, is preferred before the tenant by the Courtesie; But yet this great disaduantage the wife hath, that she cannot enter into her Dower by the Common Law, but is driuen to her Writ of Dower to recouer the same, wherein sometimes great delayes are vsed, and therefore the well aduised friends of the wife will prouide for a ioynture to be made to her, as shall be said hereafter; For by the Statute of (r) Magna carta cap. 7. shee shall tarrie in the chiefe house of her husband but by the space of fortie dayes after the death of her husband, within which time Dower shall be assigned vnto her vnlesse it were formerly assigned, &c. but of little effect was that act, for that no penaltie was thereby prouided if it were not done: which terme of 40. dayes is in law called Quarentina. But if she marry within the 40. dayes she loseth her Quarentine. But some haue said that by the ancient Law of England the woman should continue a whole yeare in her husbands house, within which time if Dower were not assigned, she might recouer it: and this certainely was the Law of England before the Conquest (s) Mulieres viduæ bis senos menses viduas exigunto, atque tum demum cui velint nubant, sin quæ ante annum nupserit dote mulctata fortunis omnibus à priore marito relictis priuatur. But for the reliefe of the widow it was prouided by the Statute of Merton made in Anno 20. H.3. cap.1. (which by (t) Bracton is called Noua constitutio) that the wife shall recouer damages in her Writ of Dower from the time of the death of her husband. But herein diuers things are obseruable. First, in what kinde of Writ of Dower she shall recouer her damages. In a Writ for a Dower ad ostium Ecclesiæ, or ex assensu patris she shall recouer no damages, because she may enter, and the words of the Statute be Et dotes suas habere non possunt sine placito. Also I haue read in an ancient & learned reading vpon this Statute, that it extendeth only to a Writ of Dower, Vnde nihil habet, and not to a Writ of right of dower, for in no Writ of right damages are to be recouered. 2. She shall recouer damages only when her husband die seised, (that is) seised of the freehold & inheritance, (u) for albeit the husband before the title of dower had made a Lease for yeares reserving a Rent, the wife shall recouer the third part of the reuersiõ with a third part of the rent & damages, for the words of the Statute be, De quibus viri sui obierunt seisiti. 3. Some say that the Demandant in a Writ of Dower, that delayeth her seise shall not recouer damages, therefore let the Demandant take heed thereof. 4. It is necessary for the wife after the decease of her husband as soone as shee can to demand her Dower before good testimony, for otherwise she may by her owne default lose the value after the decease of her husband and her damages for detaining of her Dower. For if she bring a Writ of Dower against the heire, and the heire commeth into the Court vpon the summons the first day, and plead that he hath been alwaies ready and yet is to render Dower, &c. If the wife haue not requested her Dower, she shall lose the meane values and her damages, but if she hath requested her Dower she may plead it and issue may be thereupon taken.

(r) Magna carta cap.6. Fleta lib.5.cap.23. Bracton lib 1.fol.96. Britton ca.103. 19.H.6.14 6.E.6. Dyer 76.F.N.B.161. Regist.orig.175. 1.Marie Dower 101.

(s) Lamb.Sect.120.-1.& diuers ancient Manuscripts. See the 2.part of the Institutes cap 7.

(t) Bract.lib.4.312.& lib.2.96. Britton cap.105. Fleta.lib.5.cap.23.

(n) Regist Iudic.4. Origin.173. Dyer.11.E.284. R.ft.Pl.fo.226.&c. 16.E.3.tit.Damages 83. 8.E.2.ibid.11.

(w) 5.E.3.1.41.E.3. Dower.46.and not in the booke at large. (x) 16.E.3 Dower 59. 2.H.4.7,9,H.4.4.tit.issue 133.11,H.4.40. 33.E.4.7.14.H.8.25.b.

But it is holden in some bookes (w) that a request in pays is not sufficient, and that it is the folly of the wife, that she brought not her Writ of Dower sooner. But the Law and many (x) bookes be against it, and the words of the plea (that hee hath beene alwayes ready, &c.) proue the same, and the words of the Statute also proue this. Et dotes suas habere non possunt sine placito.

And

And the reason why tout temps prist is a good plea in a writ of dower brought against the heire to barre her of the meane values and damages, because the heire holdeth by title, and doth no wrong till a demand be made. But in a writ of Ael, Cosinage, &c. where the land & damages are to be recouered, there such a plea is not good, for there the tenant of the land hath no title, but holdeth the land by wrong, and the Feoffee of the heire cannot at the first day plead tout temps prist, because he had not the land all the time, since the death of the Ancestor. 5. It is to be obserued that the meane values & damages are to be recouered against the tenant in a writ of dower, as it appeareth in a notable Record (y) betweene Belfield & Rowse, the Tenant as to parcell pleaded Non-tenure, and for the residue deteynment of Charters, vpon which pleas they were at issue, and both issues found by the Iury against the tenant, and found further that the husband died seised such a day and yeare, and had issue a sonne, and that the Demandant and the son by 6. yeares after the decease of the husband together tooke the profits of the Land, and after the sonne such a day and yeare died without issue, after whose decease the land descended to the tenant as vncle & heire to him, by force whereof he entred and tooke the profits vntill the purchasing of the originall writ, and found the value of the land by the yeare, and assessed damages for the deteyning of the Dower, and costs, and vpon this verdict, after often debating, the demandant had iudgement to recouer her dammages for all the time from the death of her husband without any defalcatiõ. In which case many things apparent therein are obseruable. Let the tenant therefore take heed how he plead false pleas. 6. That this statute of Merton doth extend to Copholds (z) where the custome is, that women be dowable. 7. That if the wife hath dower assigned to her in Chancery she shall haue no damages, (a) for the words of the statute be Et viduæ per placitum recuperauerint, &c. So it is if the heire or his feoffee assigne dower, and the wife accepteth it she loseth her damages.

(y) Mich. 8. & 9. Eliz. rot. 904. in Comm. banc.

(z) Tr. 37 Eliz. lib. 4. fo. 30. b Shawes case.

(a) 43. Ass. Pl. 32.

14. H. 8. 28.

A man seised of Lands in fee taketh a wife and granteth a rent charge, and after maketh a Feoffment in fee, and taketh backe an estate taile & dieth, the wife recouereth dower against the issue in tayle by reddition, the wife maketh a surmise that her husband died seised, & prayeth a writ to enquire of the damages, & that is granted to her. In this case she holds the land charged with the rent charge, for by her prayer she accepteth her selfe dowable of the 2. estate, for of the first estate, whereof she was dowable her husband died not seised, and so shee hath concluded her selfe, wherefore if the rent charge be more to her detriment then the damages beneficiall to her, it is good for her in that case to make no such prayer.

¶ *De quel age que la feme soit, issint que el passe lage de neufe ans al temps del mort son baron.* Feme, wife, here Littleton speaketh of a wife generally, & generally it is to be vnderstood aswel of a wife de facto, as de iure. Therfore if the wife be past the age of 9. yeeres (b) at the time of the death of her husband, she shall be endowed, of what age soeuer her husband be, albeit he were but 4. yeares old. Quia iunior non potest dotem promereri neq; virũ sustinere; nec obstabit mulieri perfecti minor ætas viri. Wherin it is to be obserued, that albeit Cõsensus non cõcubitus facit matrimonium, & that a woman cannot consent before 12. nor a man before 14. yet this inchoate & imperfect mariage (from the which either of the parties at the age of Consent may disagree) after the death of the husband shall giue dower to the wife, & therefore it is accounted in law after the death of the husband legitimum matrimonium, a lawfull mariage, quoad dotem. If a man taketh a wife of the age of 7. yeares, and after alien his Land, and after the alienation the wife attaineth to the age of 9 yeares, and after the husband dieth, the wife shall be endowed, for albeit she was not absolutely dowable at the time of the mariage, yet she was conditionably dowable, viz. if she attained to the age of 9. yeares before the death of the husband, for so Littleton here saith, so that she passe the age of 9. yeares at the death of her husband, for by his death the possibility of dower is consummate.

(b) 3. E. 1. Dower 172. Itin. North. 8. E. 2. Dower. 122. 7. E. 2. Dower 147. 12. E. 2. ibid. 159. 21. E. 3 28. 15. E. 3. Dower 67. 12. R. 2. Dower 54. 12. H. 4. 3. 35. H. 6. 40. 7. H. 6. 11. 12. 12. H. 4. Doct. & Stud. Fitz. N. B. 149. b. 22. Eliz. Dower 369. Pract. fol. 92. Fleta lib. 5. ca. 21. Lib. Intrat. fo. 123.

And so it is if the husband alien his lands & then the wife is attainted of felony, now is shee disabled, but if she be pardoned before the death of the husband, she shall be endowed. If the son indow his wife at her age of 7. yeares, ex assensu patris if she before the death of her husband attaine to the age of 9. yeares, the dower is good. But otherwise it is of an originall absolute disability; as if a man take an Alien to wife, and after the husband alien the Land, and after she is made Denizen, the husband dieth, she shall not bee indowed because her capacity & possibility to be indowed came by the denization otherwise it is if shee were naturalized by act of Parliament, whereof see more in the Chapter of Villenage.

And the bishop vpon an issue ioyned in a writ of Dower, Quod nunquam fuerunt copulati legitimo matrimonio, ought to certifie that they were coupled in lawfull mariage, albeit the man were vnder fourteene, or the wife aboue nine, and vnder twelue. So it is if a mariage de facto, be voidable by diuorce, in respect of Consanguinity, Affinity, Precontract, or such like, whereby the mariage might haue beene dissolued, and the parties freed à vinculo matrimonii, yet if the husband die before any diuorce, then for that it cannot now be auoyded, this wife de facto shall bee endowed (c) for this is legitimum matrimonium (as in the other case

(c) 10. E. 3. 35. Fleta lib. 5. cap. 22. Brit. cap. 107.

when the wife is infra annos nubiles) quoad dotem. And so in a writ of dower the Bishop ought to certifie, that they were legitimo matrimonio copulati, according to the words of the Writ. And herewith agreeth 10.E.3.35. And (d) Bracton: quamdiu durauit matrimonium, durauit dotis exactio, eo deficiente deficit dotis petitio, &c. poterit tamẽ replicare contra exceptionẽ illam, quod si aliquando fuit matrimoniũ propter Consanguinitatem, &c. inter eos accusatum, nunquam tamen fuit in vita viri sui solutum nec diuortium celebratum. But if they were diuorced à vinculo matrimonii in the life of her husband, she loseth her Dower: Otherwise it is if they were diuorced (e) Causa adulterii, which is but à mensa & thoro, and not à vinculo matrimonii, as it was adiudged. But some doe hold that a wife de facto shall not haue an appeale of the death of her husband, but only she that is a wife De iure in fauorem vitæ. Vide 50.E.3.fol.15.28.E.3.92.27. Ass. Stamf. Pl. Cor. 59. and that there vnques accouple in loyall matrimonie shall be taken de iure strictly. And so in some case a wife shall haue dower where shee cannot haue an appeale, (f) and in other Cases she shall haue an appeale, where she cannot haue a writ of dower, as if shee slope, &c. shee is barred of her dower, but not of her appeale: and the reason is for that the Statute (g) barreth her of her dower, but not of her appeale. So if the Husband bee attainted of treason, &c. his wife shall not be endowed, and yet if any doe kill him, the wife shall haue an appeale, the reason of the diuersity shall appeare hereafter in this Chapter.

(d) Bracton lib. 4. fol. 364. Britton ibidem. Fleta lib. 5. cap. 23. 32. H. 1. Dier. 156.

(e) Tr. 2. Ia. Rot. 1815 in Communi Banco. Inter Stowell & Wikes in Dower.

(f) 50. E. 15. b.

(g) W. 2. cap. 34.

¶ *Apres le mort le baron.* (h) mortuo viro hinc confirmatur Dos. This is intended of a naturall, not of a ciuill death. For if the husband entred in religion, (i) the wife shall not be endowed vntill he be naturally dead.

(h) Britton cap. 106. Bracton lib. 4. fol. 90. (i) 31. E. 3. tit. collusion 29.

And in this Chapter Littleton diuideth Dower into fiue parts, viz. Dower by the Common Law. Secondly, Dower by the Custome. Thirdly, Dower ad ostium Ecclesiæ. Fourthly, Dower ex assensu patris. And fiftly, Dower De la pluis beale. And all these Dowers were instituted for a competent liuelihood for the wife during her life. (k) propter onus matrimonii & ad sustentationem vxoris & educationem liberorum cum fuerint procreati si vir præmoriatur.

(k) Bract. lib. 2. cap. 39. fol. 92, &c. Fleta lib. 5. cap. 22. Britton cap. 101.

Sect. 37.

¶ *Nota per le Common ley la feme nauera pur sa dower forsque* (l) *la tierce part, &c.* This third part is called rationabilis dos, or Dos legitima, because it is the Dower that the Common Law giueth, rationabilis autem dos est cuiuslibet mulieris de quocunque tenemento tertia pars omnium terrarum, & tenementorum quæ vir suus tenuit in dominico suo vt de feodo, &c.

¶ Nota que per le common ley la feme nauera pur sa Dower forsque la tierce part des tenements que fueront a sa Baron durant le Espousels, mes per custome dascun pais el auera le moitie, & per le custome en ascun Ville & Burgh, el auera lentiertie. Et en touts tiels cases, el serra dit tenant en Dower.

And note, that by the common law, the wife shall haue for her Dower, but the third part of the tenements which were her husbands during the Espousals, but by the custome of some county shee shall haue the halfe, and by the custome in some Towne or Borough, shee shall have the whole. And in all these Cases shee shall be called tenant in Dower.

(l) Glanuill lib. 6. cap. 1. Bracton vbi supra. Britton vbi supra. Fleta vbi supra. Mirror cap. 1. sect. 3. Magna Carta cap. 7.

¶ *Mes per Custome dascun pais el auera le moitie, & per le custome en ascun Ville & Burgh el auera lentiertie.* Such a (m) custome may extend to a County, City, or an ancient Burgh without question, and so this custome as here it appeareth by Littleton, may extend to vpland Towns, which are neither Counties, Cities, nor Boroughs. But the surer pleading in this and the like Cases, is to lay the custome within a Mannor or Seigniory if the truth of the case will so beare it. By the custome of Gauelkind (n) the wife shall be indowed of the moity, so long as she keepe her selfe sole, and without child, which she cannot waiue and take her thirds for her life. For in that case, Consuetudo tollit communem legem.

(m) 21. E. 4. 53. 34. 7. H. 6. 26. 22. H. 6. 14. [illegible] 7. 17. 40. Ass. 27. 41. [illegible] 2. Prescription 53. 43. E. [illegible] 32. 45. Ass. 8. Dier 3[illegible] 3. 59. E. 3. 2. 10. 14. E. 3. Barre 27. 7. 33. E. 3. tit. Dower 165.

(n) Vide le statute de consuetud. Kantia, &c. Trin. 17. E. 3. coram rege Kan. in Thesaur. in which record Senectus signifieth Widowhood.

And as custome may enlarge, so may custome abridge dower, and restraine it to a fourth part, &c.

Sect.

Sect. 38.

This shall be explained by that which shall be said in the two Sections next ensuing.

¶ Auri sont deux auters manners de dower, ceasçauoir, dower que est appelle dowment ad ostium Eccleſiæ, & dower appelle dowment, ex assensu patris.

Also there be two other kinds of dower, *viz.* Dower which is called Dowment at the Church doore, and Dower called Dowment by the fathers assent.

Sect. 39.

¶ Dowment ad ostium Eccleſiæ, est lou home de plein age seisie en fée simple que serra espouse a vn feme, quant il vient al huis del monastery ou desglise destre espouse, & la apres affiance enter eux fait, il endowe la feme de sa entier terre ou de la moity, ou dautre meindre parcel, & la ouertmẽt declare le quantitie, & la certainty de la terre que el auera pur sa dower, in ceo case la feme, apres le mort le baron, poit entrer en le dit quantitie de terre dont le baron luy endowa, sans auter assignement de nulluy.

Dowment at the Church doore, is where a man of full age seised in Fee simple, who shall be married to a woman, and when he commeth to the Church doore to be maried, there, after affiance & troth plight between them, he endoweth the woman of his whole land, or of the halfe, or other lesser part thereof, and there openly doth declare the quantity and the certainty of the land which shee shall haue for her Dower. In this case the wife after the death of the husband, may enter into the said quantity of land of which her husbãd endowed her, without other assignement of any.

¶ If this Dower be made ad ostium castri siue messuagii, it is not good, but ought to be made, ad ostium Eccleſiæ siue Monasterii.

Et sciendum est (o) quod hæc constitutio fieri debet in facie Eccleſiæ, & ad ostium Eccleſiæ, non enim valet facta in lecto mortali, vel in camera, vel alibi vbi clandestina fuêre coniugia. For the law requires that this & like matters be done publikely and solemnly.

10.H.3. Dower 206.

(o) Bracton. lib. 2. cap. 18. Mirror. cap. 1. Sect. 3. & cap. 5. 10. H. 3. Dower. 201. F.N.B. 150. m.n. Flem lib. 5. cap. 22, &c. Britton cap. 104, 108, &c.

¶ *Ou home de plein age.* That is of one and twenty yeares, Anno 9. H 3. Dower 197. A man of the age of eighteene yeares tooke a wife, and by assent of his Gardian endowed her, ad ostium Eccleſiæ, and it was adiudged a good endowment, albeit the husband died before the age of one and twenty yeares; but I hold Littletons opinion to bee good Law.

9.H.3. Dower 197.

¶ *La apres affiance enter eux.* Affidare est fidem dare. Affiance or sponsality, and is derived of this word spondeo, because they contract themselues together, & ideo sponsalia dicuntur (p) futurarum nuptiarum conuentio, & repromissio. But this Dower is euer after mariage solemnized, and therefore this Dower is good without deed, because hee cannot make a deed to his wife. For no assignment of Dower ad ostium Eccleſiæ, can be made before marriage, for that before marriage the woman is not entituled to haue Dower.

(p) Glanvil. lib. 6. cap. 1. 40 E. 3. 43. Vide Vernons case lib. 4. fol. 1, 2.

¶ *De sa entier terre ou de le moitie.* In ancient time (q) as it appeareth by Glanuill

(q) Glanuill lib. 6 cap. 1. Bract. lib. 2. cap. 38, 39. & lib. 4. tract. 6. cap. 1. & 6. Britton cap. 102, &c. Flet lib. 5. cap. 23, &c.

v. 36. 63.
(t) F.N.B. 150.
(t) 20. E. 3. Barre 132.
45. E. 3. 6. Fleta lib. 5. 23.

Glanuil lib. 6. cap. 2. It was taken that a man could not haue indowed his wife ad ostium Ecclesiæ, of a more than a third part, but of lesse he might. But at this day (r) the Law is taken as Littleton here holdeth. An assignement of Dower (s) where the husband was sole seised, cannot be made of the third or fourth part in common, but ought to be in seueraltie.

(r) Britton cap. 101. Bracton lib. 2. cap. 18.

¶ *Et la ouertment* (t) *declare le quantitie & certeintie del terre.* Here be two things that the Law doth delight in, viz. first, to haue this and the like openly and solemnely done. Secondly, to haue certaintie, which is the mother of quiet and repose. And this word (moity) aboue said is to be entended of the halfe in certainty, and not of the moity in Common, which clærely (u) appeareth in that here Littleton saith, the quantitie and certaintie of the Land.

(s) Vide 14. H. 3. Dower 189. 9. H. 3. Dower 190. 8. H. 3. Dower. 195. F.N.B. 150. 40. E. 3. 43.

¶ *En ceo case la feme poet entrer en le dit quantitie del terre.* And afterwards Sectione 43. he saith, Nota, que en touts cases lou le certaintie appeirt queux terres ou tenements feme auera pur sa dower, la fem poet enter apres la mort son baron. It was instituted in fauour and relefe of wiues, that a man after marriage might assigne to his wife certaintie of Dower, to the end that the widow should not bee driuen to a long and chargeable suit wherin delay might be vsed, and in the meane time her life spent, together with her money also. For albeit the (w) Law hath prouided, Quod vidua post mortem mariti sui non det aliquid pro dote sua & maneat in capitali mesuagio mariti sui per quadraginta dies post obitum mariti sui, infra quos dies assignetur ei dos sua, nisi prius ei assignata fuerit, &c. & habeat rationabile estouerium suum interim in Communi, yet because there was no penaltie or punishment inflicted, the Tenant of the Land may driue her to sue for her dower. And this continuance of the widow in capitall Messuage, is in law called a Quarentine, Quarentina, for that it is by the space of fortie dayes, as is aforesaid. And if the heire or other tenant of the land put her out, she may haue her Writ, De quarentina habenda. If the wife mary within the fortie dayes she loseth her Quarentine, for her habitation in the house is personall to her, & only giuen to her in iudgment of Law during her widowhood, albeit the words of the law be generall. And therefore to the end that widowes might haue certaintie of estate, and that they might enter and not be driuen to suit, the Law hath prouided Dower ad ostium Ecclesiæ, and as it shall appeare hereafter, Dower ex assensu patris. And lastly by making of a toynture of which (being no dower but made in satisfaction of Dower either before or after Marriage) it is necessary that something should be said hereafter in his apt place, for that this now falleth out to be the surest way.

(w) Magna Carta cap. 7. See the second part of the Institutes cap. 7. Fleta lib. 5. cap. 23. Britton cap. 103. Bract. lib. 2. cap. 40. Regist. 175. Vide Dyer 6. El. 6. 76. b. & 261. a. F.N.B. 161. 1. Marie. Br. 101.

Nota surest way.

¶ *En touts cases quant le certeintie appeirt, &c. la feme poet entrer apres le mort del baron.* This is to be intended where the certaintie appeareth vpon an assignement of dower ad ostium Ecclesiæ, or ex assensu patris. For if a woman bring a Writ of Dower of fiue pound rent charge, and she hath iudgment to recouer the third part, albeit it be certain that she shall haue fortie shillings, yet she cannot (x) distreine for 40. shillings, before the Sherife doe deliuer the same vnto her: for whersoeuer the Writ demands land, rent, or other things in certaine, the demandant after iudgement may enter or distrein before any seisin deliuered to him by the Sherife vpon a Writ of habere facias seisinam. But in dower where the Writ demandeth nothing in certaine, there the Demandant after the iudgement cannot enter or distreine vntill execution sued, by which execution the Sherife is by the Kings writ to deliuer the third part in certaintie to the demandant. And so it is when the wife of one tenant in common demand a third part of a mottie, yet after iudgment she cannot enter vntill the Sherife deliuer to her the third part, albeit the deliuery of the Sherife shall reduce it to no more certaintie then it was.

(x) 45. E. 3. 26. 48. E. 3. 36. 22. Ass 87. 39. E. 3. 12. 37. H. 6. 38. 39. H. 6. 25. 3. H. 5. 8. Breu. 199. 30. E. 3. 30. 21. E. 4. 3. Vide lib. 6. Shelleys case. 40. E. 3. 23.

¶ *Sauns auter assignement de nulluy.* For as concerning Dower at the Common law, there must be assignement either by the Sherife, (as hath beene said) by the Kings Writ, or else by the heire or other tenant of the land by consent and agreement betweene them. To a perfect assignement of dower eight things are to bee obserued: (a) First regularly the assignement must bee certaine, as our Author here saith.

(a) 5. E. 2. Eat. 75. 40. E. 3. 22. 45. E. 3. 5. 6. (b) 1. Mar. Dyer. 91. 1. E. 2. Dower. 146. 28. H. 6. 2. Dyer. 9. El. 263. 26. Ass. 41. 31. E. 3. Scir. fa 99. 33. H. 6. 2. Vernons case. li. 4. f. 1. 5. E. 4. 22.

Secondly, It (b) must be either of some part of the land whereof she is dowable, or of a rent or some other profit issuing out of the same, either before iudgement or after, which rent may be assigned to her by parol. But an assignement of other Land whereof she is not dowable, or of a rent issuing out of the same, is no barre of her dower.

Thirdly, The assignement must be absolute, and not conditionall, or subiect to any limitation.

Fourthly, It must be made by him that is Tenant of the Land: but herein certaine diuersities are to be obserued.

(c) 7. H. 6. 34. 10. E. 2. Dower 169. 10. E. 3 38.

If two or more be Joyntenants of lands, (c) the one of them may assigne Dower to the wife,

wife of a third part in certainty, and this shall binde his companions, because they were compellable to doe the same by Law. But if one of them assigne a rent out of the Land to the wife, this shall not binde his companion, because hee was not compellable by the Law thereunto. If the husband make severall Feoffments of severall parcells and dyeth, and the one Feoffee assigne Dower to the wife of parcell of Land in satisfaction of all the Dower which she ought to have in the land of the other feoffees, the other feoffees shall take no benefit of this assignement, because they are strangers thereunto, and cannot plead the same. But in the case if the husband dyeth seised of other Lands in fee simple, and the same descend to his heire, and the heire endoweth the wife of certaine of those Lands in full satisfaction of all the Dower that she ought to have as well in the lands of the feoffees, as in his owne lands, this assignement is good, and the severall feoffees shall take advantage of it. And therefore if the wife bring a writ of Dower against any of them, they may vouch the heire, and he may plead the assignment which he himselfe hath made in safety of himselfe, lest they should recover in value against him, (d) so as there is a privity in this respect betweene the heire and the feoffees, & by this meanes the same may bee pleaded by the heire that made it. And so it is adiudged in our bookes, which is a notable case for many purposes.

(d) 33.E.3 tit. Iudgm. 254 8.E.3.69. 17.E.3.58.b. 3.E.3.tit.Dower.76. 3.E.3.Vouch.196. See the second part of the Instit. W.1.cap 9.

Fiftly, If assignement be made (e) by any disseisor, abator, intruder, or any wrong doer, of Lands or tenements if they came to that estate by collusion and couin betweene the widow and them, albeit the widow hath iust cause of action, and the assignement be indifferently made after iudgement by the Sheriffe of an equall third part, yet shall the Disseisee, &c. avoid it, for couin in this case shall suffocate the right that appertained to her, and so the wrongfull manner shall avoid the matter that is lawfull.

(e) 25.Ass.p.1.44.Ass.29. 44.E.3.46.27.Ass.74. 11.H.4 60.15.E.4.4. 19 H.8.12. Lit.83.151.

Sixtly, An assignement by (f) a disseisor, abator, intrudor, &c. if there be no couin, is good, unless it be preiudiciall to the disseisee, &c. As if the husband (g) infeoffeth the younger sonne with warranty, the eldest sonne disseise the youngest sonne, and endow the widow, in this case the younger sonne shall avoid this assignement, for otherwise he shall lose his warranty: but a disseisor, abator, intrudor, &c. cannot assigne a rent out of the land to her for her dower, to bind the disseisee, &c.

(f) 12.Ass.p.20 21.E.3.12.

(g) 3.E.3.tit.Dower.77. 16.E.2.tit.Dower Stath.

Seventhly, No assignement can be made, but by such as have a freehold, (as hath beene said) or against whom a writ of Dower doth lie, and therefore (h) an assignment by a gardian in socage is void, but a gardian in chivalry may assigne dower, as shall be said hereafter, because a writ of Dower lieth against him, and not against a gardian in socage.

(h) 31.E.1.Dower.151.29. Ass.68. 15.E.2.Dower.69.

Eightly, And before the gardian in chivalry enter, the heire within age (i) may assigne dower, for the gardian may waive the wardship. And so briefly have you heard, of what, by whom, and to whom the assignement must be made. But there needeth neither liuery of seisin, nor writing to any assignement of Dower, because it is due of common right.

(i) 7.R.2.admesurement.4. F.N.B.148.

Sect. 40.

DOwment ex assensu patris est lou le pier est seisie de Tenements en fee, & son fits & heire apparent, quant il est espouse, endowe sa feme al huys del Monasterie ou del Esglise, de parcel de Terres ou Tenements son pier de assent son pier, & assign la quantitie & les parcels. En ceo case apres le mort le fits,

DOwment by assent of the father is, where the father is seised of Tenements in fee, and his son and heire apparent when he is married, endoweth his wife at the Monastery or Church doore, of parcel of his fathers lands or tenements with the assent of his Father, and assignes the quantity & parcels; In this case after the death of the

Brit.ca.109.Fleta. lib.5. ca.22.23.Bract. lib.5. 305. 6.E.3.34. F.N.B.150.

CLOu le piere est seisie de Tenements en fee. Tenant for life of a Carue of Land, the reuersion to the father in fee, the sonne and heire apparent of the father endoweth his wife of this Carue, by the assent of the Father, the Tenant for life dieth, the husband dieth, the reuersion was a Tenement in the father, and yet this is no good endowment ex assensu patris, because the Father at the time of the assent had but a reuersion expectant upon a freehold, wherof hee could not have endowed his owne wife: and albeit the tenant for life died, liuing the husband, yet, quod initio non valet, tractu temporis non conualescet,

m 40: E 3: f 43

valescet. And for the most part, Dower ad ostium Ecclesiæ, and ex assensu patris, ensue the nature of a Dower at the Common Law. And for these the wife may haue a writ of Dower, albeit they bee certaine, as for the third part at the Common Law.

¶ *Et son fits & heire apparent.* It must be such a sonne and heire apparent, as must continue an heire apparent, and therefore the youngest sonne and heire apparent cannot endow his wife ex assensu patris, of lands wherof the father is seised in fee of the nature of Borough English, because the father may haue another sonne, and then the husband is not heire apparent: and it is in respect of the constant and perpetuall apparance, that the son and heire apparant may endow his wife of his fathers Land. And so it is of Lands in Gauelkind: (k) and this is the reason that Dower ex assensu fratris, or consanguinei, is not good, for that albeit he is heire apparant at that time, yet for the common possibility that he may haue issue, and euery issue that the brother or cosin should haue afterwards, shall exclude him, hee is no such heire apparant as the Law intendeth. (l) But an endowment ex assensu matris, is as good as ex assensu patris, because there is an apparance of a constant and perpetuall heire. And some haue said, that if the father after his assent be attainted of treason or felony, that the wife in that case loseth her Dower, because her husband doth not continue heire.

la feme entera en mesme le parcell saunz auter assignement de nulluy. Mes il ad este dit en cest case, que il couient a la feme dauer vn fait de le pier prouant son assent & consent de cel endowment. M. 44. E. 3. fol. 45.

son, the wife shall enter into the same parcell without the assignement of any. But it hath beene said in this case, That it behooueth the wife to haue a Deed of the father to prooue his assent and consent to this endowment. *M. 44. E. 3. f. 45.*

(k) 8. M. 3 Dower 193. 9. H. 3. Dow. 191. 11. H. 3. Dowe. F. N. B. 150. l. 29. E. 3. Dower 134.

(l) F. N. B. 150. e. Flet. l. 5. cap. 22. Bract. lib. 4. 305. Ambr. Gorges case. lib. 6. fol. 32.

¶ *Quant il est espouse, endow sa feme.* (m) In this case, albeit the Freehold and Inheritance is in the father, yet in respect (as hath beene said) of the constant and perpetuall apparance of the heire, the heire apparent doth endow, and the father doth but assent. And therefore where the father did endow the wife of his sonne and heire apparent, that endowment was holden void, because the husband in that case must endow and the father assent.

(m) 2 H. 3. Dower 199. 6. E. 2. 34. & E. 2. Dower 154.

And it is holden in 2. H. 3. Dower. 199. That if the heire apparent be within age, yet the endowment ex assensu patris is good. Note, Littleton in the case of Dower ad ostium Ecclesiæ, doth put the husband of full age, but here of the Dower ex assensu patris, he speaketh generally.

2. H 3 Dower 199.

¶ *Et assigne le quantitie & les parcels.* So as both in Dower ad (n) ostium Ecclesiæ, & ex assensu patris, the certainty must be expressed. And therefore where books speake of a moity, it is intended (as hath beene said) of an halfe in certaine.

(n) 9. H. 3 Dower 190. F. N. B. 150. m.

3. E. 2 Dower 154.

¶ *Apres la mort le fitz sa feme entera.* In this case after the death of the husband the wife shall enter, or haue a Writ of dower albeit the father be aliue.

¶ *Que il couient al feme dauer vn fait prouant sont assent a cel indowment.*

¶ *Vn fait.* A Deed, factum, this word (Deed) in the vnderstanding of the Common Law is an Instrument written in parchment or paper, (o) whereunto ten things are necessarily incident: Viz. First, Writing. Secondly, in Parchment or Paper. Thirdly, a person able to contract. Fourthly, by a sufficient name. Fiftly, a person able to bee contracted with. Sixtly, by a sufficient name. Seuenthly, a thing to be contracted for. Eightly, apt words required by Law. Ninthly, Sealing. And tenthly, Deliuery. A Deed cannot bee written vpon wood, leather, cloth, or the like, but onely vpon parchment or paper, for the writing vpon them can be least vitiated, altered or corrupted.

(o) Brac. li. 2. fo. 38 &c. & l. 5. fo. 396. Brit. fol. 34. 65. 56. 101. Flet. l. 2 ca. 14. & lib. 6. ca. 32. & li. 3 c. 3 4, 5, &c.

If a deed (p) be alledged in Court or Plea, regularly it must be shewed to the Court, to the end the Court may iudge whether there be apt words to make it a good contract according to the rule of Law, whereof more shall be said in the chapter of conditions. But if non est factum be pleaded, because therby the sealing, deliuery, or other matter of fact is denied, it shall be tried by the Country. Of Deeds some be indented, and some be Deeds poll. Of indented some bee bipartite, some tripartite, some quadripartite, &c. whereof more shall bee said in the Chapter of Conditions. Also of Deeds, some be inrolled, and some (q) bee not inrolled, if it bee inrolled according to the Statute of 27. Hen. 8. cap. 10. it must be inrolled in parchment for the strength and continuance therof, and not in paper, and so was it resolued in Parliament by the Iudges

(p) 4. E. 2. Fines 116. 14. E. 2. Ley 79 4. E. 2. Ley 78. 27. H. 6. 10. 27. H. 8. 22. F. N. B. 122. I.

(q) Brit. fo 101. Brac. l. 2. fol. 33. Flet. lib. 2 ca. 14.

ges in anno 13. Eliz. Now for the rest of the parts of a Deed, you shall reade thereof plentifully in our Bookes, and in my Reports; which by this short instruction you shall easily vnderstand.

¶ *Vn fait de feoffement.* It is properly called Charta feoffementi, and yet if such a Deed be denied, the plea is non est factum. So as of deeds some concerne the realty, as here a deed of feoffement; some the personalty, as a deed of gift of goods, Obligations, Bils, &c. And some mixt, whereof more shall be said in the Chapter of Releases.

If a man deliuer a writting sealed, to the party to whom it is made, as an escrow to bee his Deed vpon certaine conditions, &c. this is an absolute deliuery of the Deed, being made to the party himselfe, for the deliuery is sufficient without speaking of any words (otherwise a man that is mute could not deliuer a Deed) and tradition is onely requisite, and then when the words are contrary to the Act which is the deliuery, the words are of none effect, non quod dictum, sed quod factum est inspicitur. And hereof though there hath beene (r) variety of opinions, yet is the Law now setled agreeable to iudgements in former times, and so was it resolued by the whole Court of Common-pleas. But it may be deliuered to a stranger, as an escrow, &c. because the bare act of deliuery to him without words worketh nothing. And this is the ancient diuersity (s) in our Bookes, the record whereof I haue seene agreeable with the reason of our old bookes. And as a Deed may be deliuered to the party without words, so may a Deed be deliuered by words without any act of deliuery, as if the writing sealed lieth vpon the table, and the feoffor or obligor saith to the feoffee or obligee, Goe and take vp the said writing, it is sufficient for you, or it will serue the turne, or take it as my deed, or the like words, it is a sufficient deliuery.

Rep. 9. fol. 137. Thorough good cap. 35. Ass. Pl. 11. Tr. 29. H. 8. Dyer 95.

(r) Tr. 43. Eliz. inter Hankesby & Lacher in the Kings bench. Hill. 12. Ia. R. in the Common place.
(s) 13. H. 8. 19. H. 8. 8. 4. E. 3. 18. 13. H. 4. 8.

Of Deeds and their distinctions you shall reade excellent matter in antiquity. (t) Cartarum, alia regia, alia priuatorum, & regiarum, alia priuata, alia communis, & alia vniuersitatis Priuatarum, alia de puro feoffamento & simplici, alia de feoffamento conditionali siue conuentionali, alia de recognitione pura, vel conditionali, alia de quiete clamantia, alia de confirmatione, &c. Verba intentioni non e contra debent inseruire.

(t) Bract. lib. 2. fol. 33. Fleta lib. 3. cap. 14.

Carta non est (u) nisi vestimentum donationis. Carta non est nisi vestimentum orationis. Nemo tenetur armare aduersarium suum contra se. Scriptum est instrumẽtum ad instruendum quod mens vult. Carta est legatus mentis. (w) Benignæ sunt faciendæ interpretationes cartarum propter simplicitatem laicorum vt res magis valeat quam pereat. Nihil tam (x) conueniens est naturali æquitati quam voluntatem Domini volentis rem suam in alium transferre ratam habere.

(u) Fleta lib. 6. ca. 28. Bracton. Bracton lib. 2. fo. 34.
(w) Bracton lib. 2. f. 94. 95.
(x) Idem. l. 2. fo. 18.

(y) Pl. Com. in Throgmortons case fo. 161. b.

Re, verbis, scripto, consensu, traditione
Iunctura vestes sumere pacta solent.

Verba cartarum fortius accipiuntur contra proferentem. Generale dictum generaliter est intelligendum. Verba debent intelligi secundum subiectam materiam. Carta de non ente non valet.

Note, the father may (a) make a Deed to the wife of his sonne, and so is the law holden, for that the fathers land by his assent is charged with a future freehold whereunto a Deed is requisite, but to a Dower Ad ostium Ecclesiæ no Deed is requisite. And here it is not well done (of him that made the addition to our Author) to vouche 44. E. 3. fo. 45. because the Author himselfe vouched it not, for if he (b) meant to haue vouched authorities, he would haue vouched more than one in this case, & those that (c) he vouched he would haue cited truly, but this case is mistaken both in the yeare and in the Leafe, for where it is cited in 44. E. 3. it is in 40. E. 3. and where he saith it is fo. 45. it is fo. 43.

(a) 3. E. 2. Dower 126. 8. E. 2. Dower 154. 6. E. 3. 34. 40. E. 3. 43.

(b) 11. H. 3. Dower 186. 14. H. 3. Dower.
(c) 2. E. 2. Dower 125. Vid. Stat. Walliæ anno 12. E. 1. fo. 18. in veteri magna carta. 47. H. 3. Dower 174.

In assignment of Dower (d) either ad ostium Ecclesiæ, or ex assensu patris may bee made of more than a third part. But the ancient law was that no greater assignment could be made in those cases but of a third part, but lesse he might, as it appeareth in Glanuill.

(d) F. N. B. 150. p. Glanuill. lib. 6. ca. 1. 2. 3. 9. 34. 61.

Sect. 41.

¶ Et si apres le mort le baron el enter & agree a ascun tiel dower de les dits dowers ad ostium ecclesiæ, &c. donque

And if after the death of her husband she entreth, and agree to any such dower of the said dowers at the Church dore, &c. then

¶ *El est conclude a claimer ascun auter dower per la common ley.* wherein a diuersity is to bee obserued betweene a Dower ad ostium Ecclesiæ, or ex assensu patris, and a ioynture

Vernons case lib. 4. fo. 1. 2. Mar. Dyer 91. 31. H. 3. Scire fac. 99. 20. E. 4. 3.

ſoynture oꝛeſtate made to the wife in ſatisfaction of her Dower, foꝛ one of thoſe Dowers being aſſented vnto is a barre of the Dower at the Common Law, but a ſoynture was no barre of her Dower at the Common law. Foꝛ a right oꝛ title that one hath to a freehold cannot bee barred by acceptance of collaterall ſatisfaction. But a woman cannot haue a double dower, viz. ad oſtium Eccleſiæ, &c. and at the Common law, foꝛ the wife of one huſband can haue but one dower. But ſince Littleton wꝛote, by the Statute of 27. H. 8. if a

el eſt conclude de claimer aſcun auter dower per le common ley daſcuns terres ou tenements q̃ur fuerent a ſa dit baron. Mes ſi el voit, el poit refuſer tiel dower ad oſtium Eccleſiæ, &c. & donq; el poet eſtre endow ſolonque le cours del common ley.

ſhe is concluded to claim any other dower by the Common Law of any the Lands or Tenements which were her Husbands, but if ſhee will, ſhe may refuſe ſuch Dower at the Church dore, &c. and then ſhe may bee endowed after the Courſe of the Common law.

27. H. 8. cap. 10.
(a) 12. E. 2. Dower 158. 27. H. 8. cap. 10. verſus finem.

ſoynture be made to (a) the wife, accoꝛding to the purview of that ſtatute it is a bar of her dower, ſo as the woman ſhall not haue both ſoynture and dower, and to the making of a perfect ſoynture within that ſtatute ſix things are to be obſerued. Firſt, her ſoynture by the firſt limitation is to take effect foꝛ her life in poſſeſſion oꝛ pꝛofit pꝛeſently after the deceaſe of her huſband. Secondly, that it bee foꝛ the terme of her owne life, oꝛ greater eſtate. Thirdly, it muſt be made to her ſelfe, & to no other foꝛ her. Fourthly, it muſt be made in ſatisfaction of her whole dower, and not of part of her dower. Fiftly, it muſt either be expꝛeſſed oꝛ auerred to be in ſatisfaction of her dower. And ſixtly, it may be made either before oꝛ after marriage.

Concerning the firſt, if a man make a Feoffment in fee of Lands oꝛ Tenements either before oꝛ after marriage to the vſe of the huſband foꝛ life, and after to the vſe of A. foꝛ life, and then to the vſe of the wife foꝛ life in ſatisfactiõ of her dower, this is no ſoynture within the ſtatute, becauſe by the firſt limitation it was not to take effect in poſſeſſion oꝛ pꝛofit pꝛeſently after the death of her huſband. And albeit in that caſe A. ſhould die liuing the huſband, and after the death of the huſband the wife entreth, yet this is no barre of her dower, but ſhe ſhall haue her dower alſo, becauſe it is not within the ſaid ſtatute, and (as it hath beene ſaid) by the Common Law it was no barre of her dower. 2. It muſt bee either in fee taile, oꝛ foꝛ terme of her owne life, foꝛ an eſtate foꝛ life oꝛ liues of one oꝛ many other, oꝛ to her foꝛ a hundꝛed oꝛ a thouſand yeares, &c. if ſhe liue ſo long, oꝛ without ſuch limitation is no barre of her dower, albeit they bee expꝛeſſly made in ſatisfaction of her dower, Cauſa qua ſupra. 3. If an eſtate bee made to others in fee ſimple, oꝛ foꝛ her life vpon truſt, ſo as the eſtate remaine in them, albeit it be foꝛ her benefit, and by her aſſent, and by expꝛeſſe wꝛds to be in full ſatisfaction of her dower, yet is this no barre of her dower. The fourth is ſo plaine as it needeth not any example. 5. If deuiſe by Will cannot be auerred to be in ſatisfaction of her dower, vnleſſe it bee ſo expꝛeſſed in the Will. 6. If the ſoynture bee made before marriage, the wife cannot waiue it and claime her dower at the Common Law, but if it be made after marriage, ſhe may waiue the ſame, and claime her dower. I haue touched theſe points the moꝛe ſummarily becauſe they are reſolued at large with the reaſons thereof in Vernons caſe vbi ſupra. So as to compꝛehend all in few wꝛds, a ſoynture (which in common vnderſtanding extendeth as well to a ſole eſtate as to a ſoynt eſtate with her huſband) is a competent liuelihood of free hold foꝛ the wife of Lands oꝛ Tenements, &c. to take effect pꝛeſently in poſſeſſion oꝛ pꝛofit after deceaſe of the huſband foꝛ the life of the wife at the leaſt, if ſhe her ſelfe be not the cauſe of determination oꝛ foꝛfeiture of it. Which ſee moꝛe at large in Vernons caſe ubi ſupra. If a ſointure be made to a wife of Lands

Lecke & Randals caſe, lib. 4. fo. 4.

Vid. Vernons caſe, vbi ſupra, fo. 2. b.

Dyer. 19. Eliz. 358.

before the Couerture, and after the huſband and wife alien by fine thoſe lands ſo conueyed foꝛ her ſoynture, ſhe ſhal not be endowed of any of the other lands of her huſband. But if the ſointure had beene made after marriage, notwithſtanding the alienation by the huſband and wife thereof by fine, yet ſeeing her eſtate was oꝛiginally waiuable, & the time of her election came not til after the deceaſe of her huſbãd, ſhe may claim her dower in the reſidue of her lands. But in the other caſe, the ſoynture of the wife made before marriage was not waiuable at all, now as the dower ad oſtium Eccleſiæ, and ex aſſenſu patris, is better foꝛ the wife, becauſe in reſpect of the certainty ſhe may enter, then the dower at the Common Law, where ſhe is dꝛiuen to her reallaction, and therefoꝛe Britton calleth dower ad oſtium Eccleſiæ, and ex aſſenſu patris eſtabliſhment of Dower by the huſband and aſſignment of Dower after his deceaſe (foꝛ nothing that is vncertaine is eſtabliſhed:) So a ſoynture (that hath the foꝛce of a bar of Dower by the ſaid act of 27. H. 8.) is, as hath beene ſaid, moꝛe ſure and ſafe foꝛ the wife than either Dower

Brit. cap. 103. 103.

ad

ad oſtium Eccleſiæ, or ex aſſenſu patris, for beſides it is as certaine as thoſe others, & ſhe may enter into it, after the death of her husband and not be driuen to her action. She ſhall not be barred of her Joynture albeit her husband commit treaſon or felony, as ſhee ſhall bee both of her Dower, ad oſtium Eccleſiæ and ex aſſenſu patris by the Common Law. But now at this day by the Statutes of 1. E. 6. cap. 2. and 5. E. 6. cap. 11. a wife ſhall not loſe any title of Dower which to her was accrued, by the attainder of her husband by any manner of murder or other felony whatſoeuer. But (a) if the husband be attainted of high treaſon or petie treaſon, ſhe ſhall be (b) barred of her Dower at this day, ſo long as that attaindre ſtandeth in force.

Bract. 311. lib. 4. Britton cap. 15.

1. E. 6. ca. 6. 5. E. 6. ca. 11.

(a) Stanford 195. b.

(b) Vid. in the chapter of Garrantie, ſect.

¶ *Conclude*, commeth of the (c) verbe concludo, which is deriued of con and claudo to determine, to finiſh, to ſhut vp, to eſtoppe or barre a man, to plead or claime any other thing. Vid. Eſtoppell.

(c) Pl. Com. 276. b. per Walſh. Vid. Sect. 693. 695. 667. 679.

Sect. 42.

¶ ET nota que nul feme ſerra endow ex aſſenſu patris en le forme auantdit, mes lou ſa baron eſt fits & heire apparant a ſon pier. Quære de ceux deux caſes de dowment ad oſtium Eccleſiæ, &c. ſi la feme al temps del mort ſa baron, ne paſſe lage de ix. ans, ſi el auera dower ou non.

AND note that no wife ſhall be endowed *ex aſſenſu patris* in forme aforeſaid, but where her husband is ſonne and heire apparant to his father. *Quære* of theſe two caſes of dowment *ad oſtium eccleſiæ, &c.* if the wife at the time of the death of her husband bee not paſt the age of 9. yeares, whether ſhe ſhall haue dower or no.

¶ *Nul feme ſerra endowed, &c.* Of this ſufficient hath beene ſaid before. 35. b. †

¶ *Quære de ceux deux caſes de dowment ad oſtium Eccleſiæ, &c.* And it ſeemeth that theſe dowers being made by aſſent, &c. that the ſame are good albeit the wife be within the age of nine yeares, for Conſenſus tollit errorem. But without queſtion, a Joynture made to her vnder or aboue the age of nine yeares, is good.

Sect. 43.

¶ ET nota que en touts caſes lou le certaintie appiert queux fres ou tenements feme auer̃ pur ſa dower, la le feme poit entrer ap̃s la mort ſa baron, ſans aſſignement de nul luy. Mes lou le certaintie ne appiert, ſi come deſtre endow de la tierce part dauer en ſeueraltie, ou del moytie ſolonque le cuſtome de tener

AND note that in all caſes, where the certaintie appeareth what lands or tenements the wife ſhall haue for her Dower; there the wife may enter after the death of her husband without aſſignement of any. But where the certaintie appeares not, as to bee endowed of the 3. part, to haue in ſeueraltie, or the moytie according to the cuſtome

¶ *ET nota que en touts caſes, &c.* In all caſes where the demand of the Dower is certaine as in caſe of Dower ad oſtium Eccleſiæ or ex aſſenſu patris, there the wife after the death of the husband may enter. But where the demand is vncertaine, as in writs of dower at the Common Law, there albeit the thing it ſelfe bee certaine, yet ſhall ſhee not take it without aſſignement. As if a woman bring a writ of Dower of three ſhillings rent; albeit ſhe ought to bee endowed of one ſhilling, yet cannot ſhee after iudgment diſtreine for twelue pence before aſſignment, becauſe the demand was vncertaine,

40. E. 3. 22. 43. 45. E. 3. 4. 20 E. 3. barre 132. 8. E. 2. Entrie 75.

34. b. *

taine. And so it is if two tenants in common be, and the wife of one of them bring a writ of Dower to be endowed of a third part of a moitie, and haue iudgement to recouer, yet cannot shee enter without assignement, albeit the assignement cannot giue her any certaintie because her husbands state was incertaine. See more of this before, Sect. 39.

en seueraltie, en tielz cases il couient que la Dower soit a luy assigne aps le mort del Baron, pur ẽ que non constat deuant assignement quel part des terres ou tenements el auera pur sa Dower.

to hold in seueraltie. In such cases it behoueth that her Dower bee assigned vnto her after the death of her husband, because it doth not appeare before assignement what part of the lands or tenements she shall haue for her Dower.

Sect. 44.

32. b. †

Of this sufficient hath beene said before, and that in this case the wife cannot enter without assignement. 34. b. *

¶ Mes si soient deux ioyntenants de certaine terre en fée, & lun alien ceo que a luy affiert a vn auter en Fée, que prent feme & puis deuie; en ceo cas la feme pur sa Dower auera la tierce part de la moytie que sa baron ad purchase, a tener en common (come sa part amountera) ouesque iheire sa baron, & ouesque lauter ioyntenant que ne aliena pas, pur ceo que en tiel cas sa dower ne poit estre assigne per metes & bounds.

BVt if there be two ioyntenants of certaine land in fee, and the one alieneth that which belongeth to him, to another in fee, who taketh a wife, and after dieth; In this case the wife for her dower shal haue the third part of the moitie which her husband purchased, to hold in common (as her part amounteth) with the heire of her husband: and with the other joyntenant, which did not alien. For that in this case her dower cannot bee assigned by metes and bounds.

Sect. 45.

¶ The reason of this diuersitie is for that the ioyntenant which suruiueth, claimeth the land by the feoffment, and by suruiuorship, which is aboue the title of Dower, and may plead the feoffment, made to himselfe without naming of his compagnion that died, as shall be said hereafter in his proper place, but Tenants in common haue seuerall Freeholds and Inheritances, and their moities shall descend to their seueral heirs, & therfore their wiues shall be indowed.

¶ Et est ascauoir, q̃ la feme ne serr̃ my endow de terres ou tenements q̃ sa baron tient ioyntment ouesque vn auter al temps de son mort: mes lou il tient en common autrement est, come en le case prochein auantdit.

v. 8. 30. a.

AND it is to be vnderstood that the wife shall not bee endowed of lands or tenements which her husband holdeth jointly with another at the time of his death: but where hee holdeth in common, otherwise it is as in the case next aboue said.

Sect.

Sect. 46.

¶ Et eſt aſcauoir que ſi tenant en le taile endowa ſa feme ad oſtium Eccleſiæ, come eſt auantdit, ceo ſeruera pur petit ou rien al feme, pur ceo que apres la mort ſa baron, iſſue en le taile puit entrer ſur le poſſeſſion la feme: Et iſſint puit celuy en le reuerſ. ſi ne ſoit iſſue en le taile en vie, &c.

AND it is to bee vnderſtood, that if tenant in taile endoweth his wife at the Church doore, as is aforeſaid, this ſhall little or nothing at all auaile the wife, for that, that after the deceaſe of her husband, the iſſue in taile may enter vpon her poſſeſſion, and ſo may he in the reuerſion, if there be no iſſue in taile then aliue.

¶ The reaſon of this is, for that tenant in taile is reſtrained by the ſaid ſtatute of 13. E. 1. de donis conditionalibus. And ſo did our Author take the Law in his learned Reading. Here our Authors reaſon is à fine, and therefore ſuch an Endowment is not to bee made becauſe it is to no end. Vide Sect. 194.

Sect. 47.

¶ Auxy ſi home ſeiſie en Fée ſimple eſteant deins age endowa ſa feme al huiz del monaſterie ou deglíſe, & deuie, & ſa feme enter, en ceo cas lheire la baron luy puit ouſter. Mes auterment eſt (come il ſemble) lou la pier eſt ſeiſie en fée, & le fits deins age endow ſa feme ex aſſenſu patris, le pier donque eſteant de plein age.

ALſo if a man ſeiſed in Fee ſimple being within age endoweth his wife at the Monaſterie or Church doore, and dieth, and his wife enter, in this caſe the heire of the huſband may out her. But otherwiſe it is, (as it ſeemeth) where the father is ſeiſed in fee, and the ſonne within age endoweth his wife *ex aſſenſu patris*, the father being then of full age.

¶ The reaſon of this diuerſitie is for that in the firſt caſe the huſband within age is ſeiſed, and therefore he being within age cannot by a voluntarie act binde himſelfe: otherwiſe it is where he doth an act whereunto hee is compellable by Law, but in the latter caſe the Father which giueth the aſſent, is ſeiſed of the Freehold and Inheritance, and the Sonne thereto hath nothing, and therefore his heire ſhall not auoid it in reſpect of his Infancie. Vid. 9. H. 3. tit. Dower 197.

Sect. 48.

¶ Auxy il y ad vn auter endowment, que eſt appel dowment de la pluis beale. Et ceo eſt come en tiel caſe, que home ſeiſie de xl. acres de terre, & il tient vint

ALſo there is another dower which is called dowment *de la pluis beale*. And this is in caſe where a man is ſeiſed of fortie acres of land, and hee holdeth twentie acres of

¶ *Et le Seignior de que le terre eſt tenus en Chiualry enter en les vint acres tenus de luy.* For hee is not poſſeſſed as a Gardein againſt whom a Writ of dower lieth, vntill hee doth enter: of the Wardſhip of the body he is poſſeſſed before ſeiſure, becauſe

cause it is transitorie, but hee is not possessed of the land vntill hee enter because it is permanent. And therefore if hee doth not enter, the heire within age may assigne Dower as hath beene said, and as it appeareth afterwards.

Vid. le statut. de bigamis, cap. 3.

¶ *Si en tiel case el port breue de dower enuers le Gardein en Chiualric.* Albeit (a) the Gardein in Chiualrie or the Grantee of the King of a Wardship hath but a chattle during the minoritie of the heire, and the woman shall recouer a Freehold in her writ of Dower, yet after the Gardein as is aforesaid, hath entred into the land, that Writ lieth against him, & not against the heire who is Tenant of the Freehold, because the Law hath trusted the Gardein to plead for the heire within age, & that is in his custody, & also for his owne particular interest, & by this diuersitie all the Bookes be reconciled. So likewise if the Gardein die, the wife shall haue a Writ of Dower against his Executors, and if there bee two Executors, and one of them alone take the profits, the Writ of Dower shall be maintained against him only. If a man bee possessed of the Wardship of certaine land, either joyntly with his wife, or in the right of his wife, yet the writ of Dower lieth against the husband onely. Gardein in Socage shall not endow her selfe de la pluis beale without iudgement, as shall be said hereafter.

(a) 44. E. 3. 13. 4 H. 6. 11. Stanf. pier. 13. 6. E. 3. 15. 16. E. 3. Breue 657. Temps E. 1. Breue 863. 11 E. 3. Breue 473. 45 E. 3. 5. 17 E. 3. 70. 1. H. 7. 17. 4. H. 7. 1. 4. H. 7. aid le Roy 33. 38. E. 3. 13. 9 H. 6. 6. b. 39. E. 3. 8. 8. E. 2. Dower 169. 8. E. 2. Breue 809. 22. E. 4. Dower 16.

Bn Mary cap. Rep. 6. fol. 37.

8. E. 3. 52.

2. E. 3. 15. & 31. 38. E. 3. 37. 47. E. 3. 9. b.

¶ *Le Gardein en Chiualrie poit pleader.* The authoritie of Littleton is direct that the Gardein may plead this plea. But hereof arise two questions. First, whether if the heire bee vouched by the Tenant in the writ of Dower in the gard of the Gardein, whether he coming in as Voucher may plead that plea. The second is, whether if the Gardein in

acres de les dits xl. acres de terre dun per Seruice de chiualrie, & les auters vint acres de terre dun auter en Socage, & prēt feme, & oūt issue fits, & mozust, son fits esteant deins lage de xiiii. ans, & le Seignior de que la terre est tenus en Chiualrie, entre en les xx. acres tenus de luy, & eux ad come Gardein en Chiualrie durant le nonage lenfant, & la mere delenfant enter en le remnant, & ceo occupie come Gardein en socage: si en tiel case le feme poyt Briefe de Dower enūs le Gardein en Chiualrie, destre endow de les Tenements tenus per seruice de chiualer en le Court le Roy, ou en auter Court, le Gardein en Chiualrie puit plede en tiel case tout cest matter & monstre coment la feme est Gardein en Socage, coment deuant est dit, & prie q̄ serra adiudge per la Court que le feme luy meisme endowera de le pluis beale de les tenements que el ad come Garden en Socage solonque le value de le tierce part

the said fortie acres, of one by Knights Seruice, and the other twentie acres of another in Socage, and taketh wife, and hath issue a sonne, and dieth, his sonne being within the age of fourteene yeares, and the Lord of whom the land is holden by Knights Seruice entreth into the twentie acres holden of him, and holdeth them as Gardein in Chiualrie, during the nonage of the infant, and the mother of the infant entreth into the residue, and occupieth it as Gardein in Socage. If in this case the Wife bringeth a Writ of dower against the Gardein in Chiualrie to be endowed of the Tenements holden by Knights Seruice, in the Kings Court, or other Court, the Gardein in Chiualrie may plead in such case all this matter, and shew how the wife is Gardein in Socage, as aforesaid, and pray that it may bee adiudged by the Court, that the wife may endow her selfe *de le pluis beale*, i. of the most faire, of the Tenements which she hath as Gardein in So-

que

que el claime dauer de les tenements tenus en chiualrie p sa briefe de Dower. Et si la feme ceo ne puit dedire, donq̃ le iudgemẽt serra fait, que le Gardeine en Chiualrie tiendra les terres tenus de luy durant le nonage lenfant, quit de la feme, &c.

cage, after the value of the third part which she claimes by her Writ of Dower, to haue the tenements holden by Knights Seruice. And if the wife cannot gainsay this, then the judgement shall bee giuen, that the Gardein in chiualry shall hold the lands holden of him during the nonage of the infant, quite from the woman, &c.

Socage haue not sufficient, as if the Land holden by seruice of Chiualrie be thirtie acres, and the lands holden in Socage but fiue acres, whether shee shall bee endowed by parcels, viz. to recouer fiue acres against the Gardein in Chiualrie, & to retaine fiue acres. And as to the first the Gardein shall aswell plead it, when he comes in as Mouchee, as when he is Tenant. And as to the second some say that the Demandant in the Writ of Dower must haue assets in her hands to the value of her Dower, so as shee shall not bee partly endowed against the Gardein, and partly retaine in her owne hands. And they say, that the iudgement should be in part, that is, as to the land in Socage in seueraltie, and as to the Land in Chiualrie to recouer the third part, and compare it to the case in 8.E.4.3. that dammages shall not be recouered, partly against the Defendant in an appeale, and partly against the Abettors, but entirely either against the one or the other. And Littleton here putteth his case that the Gardein in Socage hath assets in value, and seeing it is a Dower against common right, they hold that she must bee entirely endowed either by her selfe against common right, or against the Gardein according to common right. But (a) yet by the Booke in 25. E. 3. 52. b. and others it appeareth that she may in this verie case retaine for part, and recouer against the Gardein for part.

5.E.3.67. 2.E.3.31. Lib. intrat. Dower fol. 225. a. 18.E.3.4 b.

14.H.7.26. Keble.

(a) 25.E.3.52.b. 4.E.2. tit. disseisin. 10. Regist. judic. 26. Lib. Intrat. 22. 16.E.3. Breue 657. 20.E.3. judgement 175.

Gardein in Chiualrie (b) shall plead in barre of her Dower, detainment, or eloigning of the body of the Ward, because his marriage doth appertaine vnto him: And if the heire come in (c) as Mouchee, hee shall plead the same plea. But hee shall not plead detainment of the Charters, (d) because the Charters concerning the inheritance of the heire, belong not to the Gardein. The Gardein in Chiualrie (e) may assigne Dower of the lands and tenements he hath in ward, or if he assigne a rent out of those lands in allowance of her Dower, it is good. If the Gardein in Chiualrie assigne too much for her Dower, the heire shall haue a Writ of Admesurem̃t by the Common Law. And so (f) if the heire within age assigne before the Gardein enter, to the wife too much in the Dower, the Gardein shall haue a Writ of Admesurement, by the Statute of West.2.cap.7. And if the heire within age, before the Gardein enter into the land, assigne too much in Dower, hee himselfe shall haue a Writ of Admesurement at full age: and some haue said, that in that case hee may haue it within age. (g) But if the heire (before the Gardein enter) endow the wife of more than she ought, and the Gardein assigne ouer his estate, his Assignee shall haue no Writ of Admesurement because it was a thing in action. Also the heire shall haue an (h) Admesurement for the assignment in the life of his ancestor, by the Common Law, (i) and a Writ of Admesurement lieth vpon an assignment in Chancerie.

(b) 7.E.3.57. 8.E.3.71.
(c) 17.E.3.58.
(d) 10.E.3.50. 6.El.Dyer 230.
(e) 3.E.3. Dower 75. 8.Ed.2. Dower 155. W.2.cap.7.
(f) Bract.li.4.314. Reg. origin. 171. Flet. lib. 5. cap.22. 7.H.2. tit. Admeſ. 13. F.N.B.149.
(g) 7.R.2.Admeſ.4. F.N.B.148.i.
(h) 7.R.2. vbi sup. F.N.B.149.a.
(i) 7.R.2.vbi sup. 12.H.6. Admeſ.9. F.N.B.149.a. 25.E.3.51.

¶ *Donques le iudgement serra fait que le Gardein en Chiualrie tiendra les terres tenus de luy durant le nonage lenfant, quite de la feme, &c.*

¶ *Iudgement.* Iudicium quasi juris dictum, the verie voice of Law and right, and therefore, judicium semper pro veritate accipitur. The ancient words of Judgement are verie significant, Consideratum est, &c. because that Judgement is euer giuen by the Court vpon due consideration had of the Record before them: and in euerie Judgement there ought to be three persons, Actor, Reus, and Iudex. Of Judgements some be finall, and some not finall, whereof you shall read more hereafter. And now to returne to our Author, it is materiall that these words (& cætera) be explained at large, viz. Et quod prædicta A. (the Demandant) capiat de terris hæred' prædicti in custodia sua existen̄ ad valentiam præd'. 3. partis cum pertinen̄ tenend' nomine dotis suæ pro præd' 3. parte superius per eam petit. Now some are of opinion that vpon this iudgement the Demandant may not in any sort endow her selfe of the land, because shee cannot do an act to her selfe, but she shall recoupe the third part of the profits vpon her account, and be endowed against the heire at his full age. But obserue what Littleton saith in the next Section: but before you come to that, obserue what priuilege the Common Law giueth to

22.E.4.Dow.16.16.E.3. Waſt.100.45.E.3.6.

the land holden by Knights Seruice, viz. that it shall not be dismembred, but the whole dower taken of the lands holden in Socage, and the reason is, for that Knights Seruice is for the defence of the Realme, which is pro bono publico, and therefore to be fauoured.

Sect. 49.

ET nota, que apres tiel iudgement done, la feme puit prender ses Vicines, & en lour presẽt endower luy mesme p metes & Bonds, de la pluis beale part de les tenemẽts que el ad cõe gardein en Socage, Dañ & tener a luy pur terme de sa vie, & tiel Dower est appel Dower de la pluis beale.

AND note, That after such a judgement giuen, the wife may take her Neighbours, and in their presence endow her selfe by Metes and Bonds, of the faireſt part of the Tenements which she hath as Gardein in Socage, to haue and to hold to her for terme of her life: and this Dower is called *Dower de la pluis beale.*

And the iudgement, viz. Tenend' nomine dotis, proueth, that she may haue it for terme of her life, for euerie Dower is for terme of life.

Sect. 50.

15.E.3.Dow.69. 16.E.3.tit.Waſt.100.

CLou le iudgement *est fait, &c.* For without such a iudgement, as appeareth before, Gardein in Socage cannot endow her selfe, as likewise hath beene said before.

Brac.lib.5.329.F.N.B. 7.8.

C*Ou en auter court.* That is by writ of Right of Dower in the Court of the heire, if he haue any, or of the Lord of whom the land is holden.

C*Et ceo est pur salvation del estate del Gardein en Chiualrie, durant le nonage de lenfant.* For the heire (before the entrie of the Gardein) cannot plead the said plea, that the Demandant should endow her selfe de la pluis beale. And the reason of this Dower de la pluis beale to be all of the Socage land, was for aduancement of Chiualrie for the defence of the Realme.

CET nota, q̃ tiel Dowment, ne puit este, mes lou le iudgement est fait en le court le Roy, ou en auter court, &c. & ceo est pur saluation del estate del Gardein in Chiualrie durant le nonage le Enfant.

AND note, that such dowment cannot be, but where a judgement is giuen in the Kings Court, or in some other Court, &c. and this is for the preseruation of the estate of the Gardein in Chiualrie, during the nonage of the Infant.

Sect. 51.

This is manifest of it selfe, and therefore needeth no explanation.

CET issint poyes beier cinque manners de dower, S, Dower per le Common Ley, Dower per le custome, Dower ad ostium Eccleſiæ, Dower ex assensu patris, & Dower de la pluis beale.

AND so you may see fiue kinds of Dower, *viz.* Dower by the Common Law, Dower by the custome, Dower *ad ostium Eccleſiæ*, Dower *ex assensu Patris*, and Dower *de la pluis beale.*

Sect.

Sect. 52.

ET memorandū que en cheſcun caſe lou home prent feme ſeiſie de tiel eſtate de tenemēts, &c. iſſintque iſſue que il ad perſon feme poit per poſſibilitie enheriter meſmes les tenements de tiel eſtate que la feme ad, come heire al feme, en tiel caſe apres le mort la feme il auera meſmes les Tenements per le Curteſie de Angleterre, & auterment nemy.

AND *memoran'*, that in euerie caſe where a man taketh a wife ſeiſed of ſuch an eſtate of Tenements, &c. as the iſſue which hee hath by his wife may by poſſibilitie inherit the ſame Tenements of ſuch an eſtate as the wife hath, as heire to the wife; In this caſe after the deceaſe of the wife, hee ſhall haue the ſame tenements by the Curteſie of England, but otherwiſe not.

MEmorandum, This word doth euer betoken ſome excellent point of learning, which our Author hath vſed in other places, as appeareth in the margent. Sect. 234. 301. 335.

The matter hereof hath bin partly explained in the Chapter of Tenant by the curteſie.

If a man (a) taketh a wife ſeiſed of lands or tenements in fee, and hath iſſue, and after the wife is attainted of felony ſo as the iſſue cannot inherit to her, yet he ſhall be tenant by the Curteſie, in reſpect of the iſſue which he had before the felony, and which by poſſibilitie might then haue inherited. But if the wife had been attainted of felony before the iſſue, albeit he hath iſſue afterward, he ſhall not be tenant by the curteſie. (a) 21. E. 3. 9. 11. H. 7. 3. H. 7. 17. Stamf. 195. 27. E. 3. 77. 46. E. 3. Per. 20. 26. Aſſ. p. 2. 13. H. 4. 8.

¶ *Come heire al feme.*

This doth imply (b) a ſecret of Law, for except the wife be actually ſeiſed, the heire ſhall not (as hath been ſaid) make himſelfe heire to the wife: and this is the reaſon that a man ſhall not be Tenant by the Curteſie of a ſeiſin in Law. (b) Lib. 8. fol. 34. in Paines caſe.

Sect. 53.

ET auxy en cheſcun caſe lou le feme prent baron ſeiſie de tiel eſtate des Tenements, &c. Iſſint q̄ ſi per poſſibilitie il puiſſoit happer q̄ ſi le feme auoit aſcū iſſue p̄ ſa baron, & que m̄ iſſue puiſſoit per poſſibilitie enheriter meſmes les Tenements de tiel eſtate que le baron ad, come heire a le baron, de tiels tenements el auer̄ ſa Dower, & auterment nemy. Car

AND alſo in euerie caſe where a woman taketh a husband ſeiſed of ſuch an eſtate in tenements, &c. ſo as by poſſibilitie it may happen that the wife may haue iſſue by her husband, and that the ſame iſſue may by poſſibilitie inherit the ſame Tenements of ſuch an eſtate as the husband hath, as heire to the husband. Of ſuch Tenements ſhee ſhall haue her Dower, & otherwiſe not. For

¶ *Iſſint que ſi per poſſibility il puit happer que le feme auoit aſcun iſſue per ſon baron.*

Albeit the wife bee a hundred yeares old, or that the husband at his death was but foure or ſeuen yeares old, ſo as ſhee had no poſſibilitie to haue iſſue by him, yet ſeeing the Law ſaith, That if the wife be aboue the age of nine yeares at the death of her husband, ſhee ſhall bee endowed, and that women in ancient times haue had children at that age, whereunto no woman doth now attaine, the Law cannot iudge that impoſſible, which by nature was poſſible. And in my time, a woman aboue threeſcore yeares old hath had a childe, and ideo non definitur in 11. H. 4. 2. 7. H. 6. 11. 12.

in jure. And for the husbands being of such tender yeares, he hath habitum, though hee hath not potentiam at that time, and therefore his wife shall be endowed.

¶ *Et que mesme lissue puissoit per possibilitie inheriter mesmes les tenements, &c.* A man seised of land in genetall taile, taketh wife, and after is attainted of felony, before the said Statute of 1. E. 6. the Issue should haue inherited, and yet the wife should not haue beene endowed: For the Statute of W. 2. ca. 1. releeueth the issue in taile, but not the wife in that case. But at this day, if the husband bee attainted of felony, the wife shall bee endowed, and yet the issue shall not inherit the lands which the father had in Fee simple. If the wife elope from her husband, &c. she shall be barred of her Dower, as hath beene said, and yet the Issue shall inherit.

7. §. 36.

32. a.

si tenemts sont dons a vn hõe & a les hẽes que il engendra de corps sa feme, en tiel case la feme nad riẽs en les tenements, & le baron ad estate forsque come Donée en especiall taile; vncore si le baron deuy sans issue, mesme la feme serra endow de mesms les tenemts, pur ceo que lissue que el p possibilitie puissoit auer per mesme l' baron, puissoit enheriter mesmes les tenements. Mes si la feme deuiast, viuant sa baron, & puis l' baron prist auter feme, & mourust, sa second feme ne serra my endow en cest case, causa qua supra.

if tenements be giuen to a man, and to the heires which hee shall beget of the body of his wife, in this case the wife hath nothing in the tenements, and the husband hath an estate but as Donee in speciall taile; yet if the husband die without issue, the same wife shall bee endowed of the same tenements, because the issue which she by possibilitie might haue had by the same husband, might haue inherited the same tenements. But if the wife dieth, liuing her husband, and after the husband takes another wife and dieth, his second wife shall not bee endowed in this case for the reason aforesaid.

Sect. 54.

5. E. 3. Voucher 249.
8. H. 3. Ass. 293.
4. H. 6. 24. F. N. B. 149.

¶ You may easily perceiue by the context that this shaft came neuer out of Littletons quiuer of choice arrowes, and therefore I will leaue it. Onely for Students sake I will refer them to 5. E. 3. Voucher 249. 8. E. 3. Ass. 393. 4. H. 6. 24. F. N. B. 149.

¶ Nota si vn home soit seisie de certaine terres & prist vn feme, & puis aliena mesme la terre oue garranty, & puis le feoffor, & le feoffee deuiont, & le feme de le feoffor port vn action de dower enuers le issue le feoffee, & il vouch lheire le feoffor, & pendant le voucher & nient termine, la feme le feoffee port son action de dower enuers le heire le feoffee, & demaunda la tierce part de ceo

NOte if a man be seised of certaine lands, and taketh wife, and after alieneth the same land with warrantie, and after the feoffor and feoffee dye, and the wife of the feoffor bring an action of Dower against the issue of the feoffee, and hee vouch the heire of the feoffor, and hanging the voucher and vndetermined, the wife of the feoffee brings her action of Dower against the heire of the

de que ſa Baron fuit ſeiſie, & ne voile demander le tierce part del eux deux parts de que ſa Baron fuit ſeiſie, fuit adiudge, que el nauera iudgement tanque lauter plée fuit determine.

Feoffee, and demand the third part of that whereof her husband was ſeiſed, and will not demand the third part of theſe two parts of which her husband was ſeiſed, It was adiudged, that ſhee ſhould haue no iudgement vntill ſuch time as the other plea were determined.

Sect. 55.

¶ ET nota que Vauiſour dit, Que ſi vn home ſoit ſeiſie de terre & fait felonie, & puis alien, & puis eſt attaint, la feme auera bone action de Dower enuers le Feoffée: Mes ſi ſoit eſchete al Roy, ou al Seignior, el nauera bée de dower, Et ſic vide diuerſitatem, & quære inde Legem.

AND note, *Vauiſour* ſaith, that if a man be ſeiſed of land & committeth felony, and after alieneth, and after is attaint, the wife ſhall haue a good action of Dower againſt the Feoffee: but if it be eſcheated to the King, or to the Lord, ſhe ſhal not haue a writ of Dower. And ſo ſee the difference, and inquire what the law is herein.

¶ This is alſo of the new addition, & exploſa eſt hæc opinio, for it is cleare in Law that the wife at the Common Law ſhould not haue been endowed againſt the Feoffee. For to deterre and retaine men from committing of treaſon or felony, the Law hath inflicted fiue puniſhments vpon him that is attainted of treaſon or felony. 1. Hee ſhall loſe his life, and that by an infamous death of hanging betweene heauen and the earth, as vnworthy in reſpect of his offence of either. 2. His wife that is a part of himſelfe, (Et erunt animæ duæ in carne vna) ſhall loſe her Dower. 3. His bloud is corrupted, and his children cannot be heires to him, and if he be noble or gentle before, he and all his poſteritie are by this attainder made ignoble. 4. He ſhall forfeit all his lands and tenements; And 5. all his goods and chattels, and all this is included by the Law in the iudgement, Quod ſuſpendatur per collum. But this is not intended of all felonies, but of felony by ſtealing of goods aboue the value of xij. pence, and not of petit larceny vnder the value. So as the woman ſhall loſe her Dower as well againſt the Feoffee as againſt the Lord by eſcheat. And ſo it was reſolued in a Writ of Dower brought by Mary Gates late wife of Iohn Gates, who after the couerture had infeoffed Wiſeman in fee, and after committed high treaſon, and was thereof attainted, that the wife ſhould not be indowed againſt the Feoffee, and in that caſe it was reſolued, that ſo it was at the Common Law in caſe of felony. And it is to bee vnderſtood, that the wife ſhall not only loſe her reaſonable Dower at the Common Law for the felony of her husband, but alſo her Dower ad oſtium Eccleſiæ, and ex aſſenſu patris, for felony done after the Dower aſſigned, & Dower by cuſtome alſo. And the reaſon of all this is yeelded by Littleton himſelfe in the Chapter of Warranties, Sect. 746. to the end that men ſhould bee afraid to commit felony. But at this day the wife of a man attainted of felony (as often hath beene ſaid) ſhall be endowed by force of the Statutes in that caſe prouided.

And it appeareth by Britton, Que fem de homicide ne teigne nul dower de tenants que lour fuit aſſigne per lour barons, ſo as the wife of a Felon attainted by the Common Law was diſabled to recouer Dower ad oſtium Eccleſiæ, and ex aſſenſu patris, as well as her reaſonable Dower which the Common Law gaue her. See in Bracton many barres of Dower as the Law was then held.

Vide Sect. 746.
Vide Britton cap. 109. l. 2. Bracton title euidens, l. 4. fol. 397. 30. 311. Stanf. pl. cor. 194. 195.

Britton fol. 15. cap. 5.

Vide ſect. 746.

M. 3. & 4. Ph. & Mar. Ro. 760. in Com. Banco. 8. E. 3. 20. 12. H. 4. 30.

Bracton lib. 4. fol. 311.

Vide ſect. 746. Britton cap. de homicide, fol. 15. Bracton lib. 4. fol. 308. & Fleta vbi ſupra, & Britton vbi ſupra.

CHAP.

Chap. 6. Sect. 56.

Tenant a terme de vie.

Brast. lib. 2. ca. 5. & ca. 9. fol. 26. Fleta lib. 3. ca. 12. Britton fol. 83. Bracton lib. 4. fol. 170. Vide Sect. 381.

Ou pur terme de vie dun auter home. Now it is to bee vnderstood, that if the Lessee in that case dieth liuing Cesty que vie (that is, he for whose life the lease was made) he that first entreth shal hold the land during that other mans life, and he that so entreth is within Littletons words, viz. Tenant pur auter vie, and shall be (a) punished for waste as Tenant pur auter vie, and subiect to the payment of the rent reserued, and is in Law called an occupant (occupans) because his title is by his first occupation. And so if tenant for his owne life grant ouer his estate to another, if the Grantee dieth there shall be an occupant. In like manner it is of an estate created by Law; for if Tenant by the Curtesie or Tenant in dower grant ouer his or her estate, and the Grantee dieth, there shall be an occupant. But against the King there shall be no occupant, because nullum tempus occurrit Regi. And therefore no man shall gaine the Kings land by priority of entrie. There can be no occupant of any thing that lieth in grant, and that cannot passe without Deed, because euerie occupant must claime by a Que estate and auerre the life of Ce' que vie. It were (c) good to preuent the incertaintie of the estate of the occupant to adde these words, (to haue and to hold to him and his heires during the life of Ce' que vie) and this shall preuent the occupant, and yet the Lessee may assigne it to whom he will, or if he hath already an estate for another mans life without these words, then it were good for him to assigne his estate to diuers men and their heires during the life of Ce' que vie.

(a) Vide le Deane de Worcest. case, li. 6. fo. 37. 20. Ass. 31. 39 E. 3. 1. 27. H. 6. Recognizance. Statham pl. vltimo. 38 H. 6. 27. Bracton lib. 2. fol. 9. Britton fol. 84. 85.

(b) 27. Ass. p. 31. & Pl. Com fol. 28. b. in Colthorst case, tit. Barre 303.

(c) Littleton 167. 11. H. 4. 42. 17. E. 3. 48. 39. E. 3. 25. 7 H. 4. 46. 8. H. 4. 15. Dier 8. Eliz. 253.

(d) Bract lib. 4. fol. 222. 231. 232. & vid. fo. 136. 137. Fleta lib. 4. ca. 19. 25. 26. 27. 8. E. 3. 54. 55. 21. E. 3. 41. 48. E. 3. 31. 7. E. 4. 28. 21 H. 6. 46. 10. E. 4. 3. F. N. B. 180. lib. 4. 86. 87. in Luttrels case.

Vide Sect. 381.

Rosses case, lib. 5 fol. 13.

Note that (d) to euerie Tenant for life, the Law as incident to his estate without prouision of the partie giueth him three kinde of Estouers, (that is) housbote which is twofold, viz. Estouerium ædificandi & ardendi. Ploughbote, that is, Estouerium arandi. And lastly Haybote, and that is Estouerium claudendi, and these Estouers must be reasonable, Estoueria rationabilia. And these the Lessee may take vpon the land demised without any assignment, vnlesse hee bee restrained by speciall couenant, for modus & conuentio vincunt legem. Bote in the Saxon tongue, and Estouers in the French in this case are of all one signification, that is, to haue compensation or satisfaction for these purposes. Estouers commeth of the French word estouer. And the same Estouers that Tenant for life may haue, Tenant for yeares shall haue.

Tenant p terme de vie est, lou home lessa terres ou tenements a vn auter pur terme de vie le Lessee, ou pur terme de vie dun auter home, en tiel case le Lessee est Tenant a terme de vie. Tenant for term of life is, where a man lettteh lands or tenements to another for terme of the life of the Lessee, or for terme of the life of another man. In this case the Lessee is Tenant for terme of life. But by common speech hee which holdeth for terme of his owne life, is called Tenant for terme of his life, and hee which holdeth for terme of anothers life, is called Tenant for terme of another mans life.

Mes per common parlance celuy que tient pur terme de sa vie demesne, est appel Tenant pur terme de sa vie, & cestuy que tient pur terme dauter vie, est appel Tenant pur terme dauter vie.

You haue perceiued, That our Author diuides Tenant for life into two branches, viz. into Tenant for terme of his owne life, and into Tenant for terme of another mans life: to this may be added a third, viz. into an estate both for terme of his owne life, and for terme of another mans life.

As if a lease be made to A. to haue to him for terme of his owne life, and the liues of B and C for the Lessee in this case hath but one Freehold, which hath this limitation. During his owne life, and during the liues of two others. And herein is a diuersitie to bee obserued betweene seuerall estates in seuerall degrees, and one estate with seuerall limitations. For in the first, an estate for a mans owne life is higher than for another mans life, but in the second it is not. As if A. be tenant for life, the remainder or reuersion to B. for life, A. may surrender to B. for

for the estate of B. for terme of his owne life is higher than an estate for another mans life: And therefore if Tenant for life infeoffe him in the remainder for life, this is a surrender, & no forfeiture. And albeit an estate for terme of a mans owne life be but one freehold, yet may seuerall freeholds in certaine cases be derined out of the same, whereof our bookes are verie plentifull, & wherewith you may disport your selues for a time. As if Tenant for life maketh a lease by Deed, or without Deed, to him in the remainder, or reuersion, in taile or in fee, for the term of the life of him in the rem or reuersion, & after he in the remainder taketh wife & dieth, his wife shall not be endowed, for Tenant for life shall enioy the land againe, for forfeiture it cannot be, for he in the rem. was party, & surrender it cannot be, for that his whole estate was not giuen. 24.E.3.32. & 43. 30.Ass. p.47. 19.E.3.Sub.8. 13.R.2. Dow.95. 7.H.6. 3. per Cur. 18.E.3.48.

The heire maketh a lease for life, reseruing a rent, against whom the wife recouereth her Dower and dieth, the Lessee shall haue the land againe for his life, and the rent is reuiued. 7.H.5.4.

So it is, if Tenant for life take husband and by Deed indented they make a lease to him in the reuersion for the life of the husband, reseruing a rent, this is neither forfeiture, nor absolute surrender, for the cause aforesaid, and the reseruation is good. 29.Ass.p.64.

B. seised of lands in fee, taketh to wife I. and infeoffe C. in fee, who takes Alice to wife: C. dieth, Alice is endowed; B. dieth, I. recouereth dower against Alice and dieth, Alice shall enioy the land againe during her life. 8.E.2.Ass.393. 45.E.3.13.

A. and (a) B. Ioyntenants, A. for life, and B. in fee, ioyne in a lease for life, A. hath a reuersion, and shall ioyne in an Action of Waste. (a) 2.H.5.7. 13.H.7.13. 18.E.2.Br. 835. F.N.B. 59. f.

Tenant for (b) life, and he in the reuersion ioyne in a lease for life, it is said, that they shall ioyne in an Action of Waste, and that the Lessee for life shall recouer the place wasted, and he in reuersion, dammages. (b) 27.H.8.13. 13.H.7. 15. 22.H.6.24. 17.E. 3.9.b.

If a man grant (c) an estate to a woman dum sola fuit, or durante viduitate, or quam diu se bene gesserit, or to a man & a woman during the couerture, or as long as the Grantee dwell in such a house, or so long as he pay x.l. &c. or vntill the Grantee be promoted to a Benefice, or for any like incertaine time, which time, as Bracton saith, is tempus indeterminatum: In all these cases, if it be of lands or tenements, the lessee hath in iudgement of law an estate for life determinable, if liuerie be made; and if it be of rents, aduowsons, or any other thing that lie in grant, he hath a like estate for life by the deliuerie of the Deed, and in count or pleading he shall alleage the lease, and conclude, that by force thereof he was seised generally for terme of his life. (c) 37.H.6.27. 26.E.3. 69. 14.E.2. Grant. 92. 3.E.3.15. 14.H.8.13. Bracton lib.4. fol.207. Fleta lib.3.cap.12.

If a man make a lease of a Mannor, that at the time of the lease made is worth xx. l. per annũ, to another vntill C.l. be paid, in this case because the annuall profits of the Mannor are incertain, he hath an estate for life, if liuerie be made, determinable vpon the leuying of the C. l. But if a man grant a rent of xx. l. per añ vntill C.l. be paid, there he hath an estate for fiue yeares, for there it is certaine & depends vpon no incertainte. And yet in some cases a man shall haue an incertaine interest in lands or tenements, and yet neither an estate for life, for yeares, or at will. As if a man by his will in writing, deuise his lands to his Executors for payment of debts, and vntill his debts be paid; in this case the Executors haue but a Chattell, and an incertaine interest in the land vntill his debts be paid, for if they should haue it for their liues, then by their death their estate should cease, and the debts vnpaid, but being a Chattell, it shall goe to the Executors of Executors for the payment of his debts; and so note a diuersitie betweene a deuise and a conueyance at the Common Law, in his life time. And tenant by Statute merchant, by Statute staple, & by Elegit, haue incertaine interests in lands or tenements, and yet they haue but Chattels, and no Freehold, whose estates are created by diuers Acts of Parliament, whereof more shall be said hereafter. And so haue Gardians in Chiualrie which hold ouer for single or double value incertaine interests, and yet but Chattels. 33.Ass.p.2. Lib 8.f.9.Mannings case. 3.H.7.13. 27.H.8.5. 14.H.8.13. 21.Ass.p.82 v: 43 b.

If one grant lands or tenements, reuersions, remainder, rents, aduowsons, commons, or the like, & expresse or limit no estate, the Lessee or Grantee (due ceremonies requisite by Law being performed) hath an estate for life. The same Law is of a declaration of a vse. A man may haue an estate for terme of life determinable at will; As if the King doth grant an office to one at will, and grant a rent to him for the exercise of his office for terme of his life, this is determinable vpon the determination of the office. Vid. sect.381. 7.Ass.Pl.12. 13. El. Dyer 300. 7.E.4.23.

A. Tenant in fee simple make a lease of lands to B. to haue and to hold to B. for terme of life, without mentioning for whose life it shall be, it shall be deemed for terme of the life of the Lessee, for it shall be taken most strongly against the Lessor, & as hath beene said, an estate for a mans owne life is higher than for the life of another. But if tenant in taile make such a lease without expressing for whose life this shall be taken but for the life of the Lessor, for two reasons. Videsect. 381.

First, when the construction of any Act is left to the Law, the Law which abhorreth iniurie & wrong will neuer so construe it, as it shall worke a wrong: and in this case, if by construction it should be for the life of the Lessee, then should the estate taile be discontinued, and a new reuersion gained by wrong: but if it bee construed for the life of the Tenant in taile, then no wrong is wrought. And it is a generall rule, that whensoeuer the words of a Deed, or of the parties without Deed may haue a double intendment, and the one standeth with Law and right, m: v: 44: a.

4 E.2.Wall.11.17.E.3.7.

right, and the other is wrongfull and against Law, the intendment that standeth with Law shall be taken.

Secondly, The Law more respecteth a lesser estate by right, than a larger estate by wrong, as if Tenant for life in remainder disseise Tenant for life, now he hath a Fee simple, but if Tenant for life die, now is his wrongfull estate in fee by iudgement in Law changed to a rightfull estate for life.

19.H.6.7.H.4.32. 6.E.3.17. 7.E.3.66. 18.E.3.60. 23.E.3.c.1. &c. 11.H.4.44. 38.E.3. 23.24.

If a man retaine a seruant generally without expressing any time, the Law shall construe it to be for one yeare, for that retainer is according to Law. Vide 23.E.3.cap.1. &c. To shut vp this point it hath beene adiudged, that where Tenant in taile made a lease to another for terme of life generally, and after released to the Lessee and his heires, albeit betweene the Tenant in taile, and him a Fee simple passed, yet after the death of the Lessee, the entrie of the issue in taile was lawfull; which could not be, if it had beene a lease for the life of the Lessee, for then by the release it had beene a discontinuance executed. But let vs now returne to Littleton.

Sect. 57.

THis and the rest that follow in this chapter concerning the description of Feoffor and Feoffee, Donor and Donee, and Lessor and Lessee are euident.

¶ *Et est ascauoir que il y ad le Feoffor, & le Feoffee, &c.* Vid. Sect.2. where a light touch is giuen who may purchase, now somewhat is to bee said, who haue abilitie to enfeoffe, &c. and may be a Feoffor, donor, Lessor, &c. whosoeuer is disabled by the Common Law to take, is disabled to infeoffe, &c. But many that haue capacitie to take, haue no abilitie to infeoffe, &c. As men attainted of Treason, Felony, or of a Præmunire, Aliens borne, the Kings Villaines, Traitors, Felons, &c. he that hath offended against the Statutes of Præmunire, after the offences committed if attainder ensue, Ideots, madmen, a man deafe, dumbe, and blinde from his natiuitie, a Feme Couert, an Infant, a man by dures: for the feoffments, &c. of these may be auoided. But an Hereticke, though he be conuicted of heresie, a Leper remoued by the Kings Writ from the societie of men, Bastards, a man deafe, dumbe, or blinde, so that hee hath vnderstanding and sound memorie, albeit he expresse his intention by signes, Villaine of a common

Bracton lib.5.fol.415. Britton fol.88. Flet. li.3. ca.3. & lib.6.ca.39.40.

2.H.5.ca.7. which is repealed. Doct. & Stud. lib.2.cap.29.

¶ Et ē ascauoir que il y ad le Feoffor & le Feoffée, Donor & le Donée, le Lessor & le Lessée. Le Feoffor est proprement lou home enfeoffa vn auter en ascuns terres ou tenements en fée simple, celuy que fist le feoffment est appel feoffour, & celuy a que le feoffment est fait, est appel feoffée. Et le Donour est proprement lou vn home done certaine terres ou tenements a vn auter en le taile, celuy que fist le done est appel le Donor, & celuy a que le done est fait, est appel le Donée. Et le Lessor est proprement lou vn home lessa a vn auter certaine terres ou tenements pur terme de vie, ou pur terme des ans, ou a tener a volunt: celuy que fist le leas est appel les-

And it is to bee vnderstood, that there is Feoffor and Feoffee, Donor & Donee, Lessor and Lessee. Feoffor is properly where a man enfeoffes another in any lands or tenements in Fee simple, hee which maketh the feoffment is called the Feoffor, and hee to whom the feoffment is made, is called the Feoffee. And the Donor is properly where a man giueth certaine lands or tenements to another in taile, he which maketh the gift, is called the Donor, & he to whom the gift is made, is called the Donee. And the Lessor is properly where a man letteth to another lands or tenements for terme of life, or for terme of yeares, or to hold at will. Hee which maketh the lease is called Lessor,

for

for & celuy a que le leas est fait, est appel Lessée. Et chescun que ad estate en ascun terres ou tenements pur terme de sa vie ou pur terme dauter vie, est appell Tenant de franktenement, & nul auter de meindre estate poit auer franktenement, mes ceux de greinder estate ont franktenement car cestuy en fée simple ad franktenement & celuy en le taile ad franktenement, &c.

and hee to whom the lease is made, is called Lessee. And euerie one which hath an estate in any Land or Tenements for terme of his owne or another mans life, is called Tenant of Freehold, and none other of a lesser estate can haue a Freehold, but they of a greater Estate haue a Freehold; For hee in Fee simple hath a Freehold, and Tenant in taile hath a Freehold, &c.

person before entrie, or the like may inforce, &c.

(a) All feoffments, gifts, grants, and leases by Bishops, albeit they bee confirmed by the Deane & Chapter, by any of the Colleges or Hals in either of the Universities, or elsewhere, Deanes & Chapters, Maister or Gardian of any Hospitall, Parson, Vicar, or any other hauing Spirituall or Ecclesiasticall liuing, are also to bee auoided, (b) and all the said bodies politique or corporate, are by the Statutes of the Realme disabled to make any conueyances to the King, or to any other, as it hath been adiudged: which statutes haue bin made since Littl. wrote.

(a) 32.H.8.cap.28.1.El. not printed. 13.El.ca.10. 14.El.ca.11. 11.El.c.20. 1a.ca.

(b) Lib.4.fo.76.120.li.5. fol.6.14.li.6.fo.37.li.11. fo.67.Magdalen College case, Vide Lest. de W. 2. cap.41.

It is prouided (c) by the Statute of Magna Charta, quod nullus liber homo det de cætero amplius alicui de terra sua, quam vt de residuo terræ suæ posset sufficienter fieri domino feodi seruitium ei debitum quod pertinet ad feodum illud. Upon which Act I haue heard great question (d) made, whether the feoffment made against that Statute were voidable or no, and some haue said that the Statute intended not to auoid the feoffment, but implicite to direct the tenure, viz. that the tenant should not infeoffe another of parcell to hold of the chiefe Lord (that is of the next Lord) but to hold of himselfe, & then the Lord may distreine in euery part for his whole seruice without any preiudice vnto him. But this opinion is against (e) the authoritie of our Bookes, and against the said Statute of Magna Charta. For first it is agreed in 10. H. 7. that aswel before the statute as after, a tenant which held two Acres might haue alienes one of the Acres to hold of him, & notwithstanding the Lord might haue distreined in which of the Acres he would for his whole seruices: & reason teacheth that before that Statute a tenant could not haue alienes parcell to hold of the chiefe Lord; For the Seignorie of the Lord was entire, for the which the Lord might distreine in the whole or in any part, and which the Tenant by his owne Act cannot diuide to the preiudice of the Lord to barre him to distreine in any part for his Seruices, as hee should doe, if hee should infeoffe another of parcell to hold of the chiefe Lord. But the Tenant might haue made a Feoffment of the whole to hold of the chiefe Lord, for there no preiudice insued to the Lord. Others haue said, and they said truly, that the intention of the Statute was that the Tenant could not alien parcell (which might turne to the preiudice of the Lord) without his assent, and this appeareth clerely by the Mirror. And by this Statute the King tooke benefit to haue a fine for his licence, before which Statute no fine for alienation was due to the King. For it is (f) adiudged that for an alienation in time of Henry the second, no fine was due, and it appeareth in our Bookes, that if an alienation had beene made before 20. H. 3. no fine was due to the King for alienation: Now it is to be obserued, that oftentimes for the better vnderstanding of our Bookes, the aduised Reader must take light from Historie and Chronicles especially for distinction of times. And therfore Matthew Paris (who in his Chronicle reciteth Magna Charta) testifieth that King Henry the third by euill counsell (and especially, as the truth was, of Hubert de Burgo then chiefe Justice) sought to auoid the great Charter first granted by his father King Iohn, and afterward granted and confirmed by himselfe in the ninth of Henry the third, for that as he said King Iohn did grant it by Dures, and that he himselfe was within age when he granted and confirmed it. But forasmuch as afterwards the said King Henry the third in the twentieth yeare of his reigne, at what time hee was nine and twentie yeare old, did grant and confirme the said great Charter, for that cause to put out all scruples is the twentieth yeare of Henry the third named, albeit in law the Kings Charter granted in the ninth yeare of Henry the third, was of force & validitie notwithstanding his nonage, for that, in iudgement of Law the King, as King, cannot be said to be a Mi-

(c) Magna Charta ca.32. Mirror cap.5.sect.2. Glanuil lib.7.cap.1. Bract.lib.2.fol.92.&c. Flera lib.3.cap.3.

(d) Vide an excellent declaration hereof inter adjudicat' coram Rege. Trin.E.1.fol.2.in Thesaur. Nott. & Derb.

(e) Bract.lib.1. 10.H.7.fol.10.b. 33.E.3.auowry 255. Stamf.prer.fol.29. 8.E.4.12.

Mirror cap.5.sect.2. Flera lib.3.cap.3.

(f) 26.Ass.p.37. 20.Ass. p.17. 20.E.3.auowr.126. 34.E.3.c.15. Vide Stamf. 29. 30.Matt. Paris. Walsingham 37. 39.

Vide 5.H.3.Mordanc.53. Magna Charta there vouched, which was the Charter of King Iohn: for it was cited before, 9.H.3.

vid. Flowd. fo: 213

nor, for when the Royall Body Politique of the King doth meet with the naturall capacitie in one person, the whole Body shall haue the qualitie of the Royall Politique, which is the greater and more worthy, & wherein is no minoritie. For, Omne majus trahit ad se quod est minus. And it is to be obserued, that no Record can be found, that either a licence of alienation was sued, or pardon for alienation was obtained for an alienation without licence at any time before the twentieth yeare of Henry the third, and it is holden in the twentieth of Edward the third, that a licence for alienation grew by this Statute.

20.Ass. Pl.17. by Skipwith.

Now in the case of a common person it was the common opinion, that if the tenant had alienated any parcell contrarie to the said Act, that he himselfe was bound by his owne Act, but that his heire might haue anoided it; and in the Kings case many held the same opinion. For Britton saith, Ne Countes, ne Barons, ne Chiualer, ne Serjeants, que teignont en chiefe de nous ne purr' my dismember nous fees sanns licence: que nous ne puissent per droit engettre les purchasors, &c. And herewith agreeth Fleta, and our Bookes. But now by the Statute 1 E.3. cap.12. & 34.E.3.cap.15. although the Kings tenant in chiefe or by Grand Seriauntie do alien all or any part without licence, yet is there not any forfeiture of the same but a reasonable fine therefore to be paid. And note, it appeareth by the preamble in 1.E.3. that complaint was made that land holden of the King in Capite, being aliened without licence was seised as forfeited. And in the case of a common person, the Statute of 18.E.1. De quia emptores terrarum hath made it cleare, for this hath in effect as to the common persons taken away the said Statute of Magna Charta, cap.32. for thereby it is prouided, Quod liceat vnicuique libero homini terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita quod feoffatus teneat, &c. de Capitali Domino. And herein are diuers notable points to be obserued. First, that this word licear proueth that the Tenant could not, or at least wayes was in danger to alien parcell of his Tenancie, &c. vpon the said act of Magna Charta. Secondly, that vpon the feoffment of the whole, the Tenant shall hold of the chiefe Lord. Thirdly, that the Tenant might infeoffe one of part to hold pro perticula of the chiefe Lord. But this Act (the King being not named) doth not take away the Kings fine due to him by the Statute of Magna Charta.

Regist.int.les brenes de oneranda. pro rata portione.

Britt.fol.28.88.186.187. 245.247.Prer.Regis ca.7. Fleta lib.6.cap.29.acc. 20.E.3.Ass.122. 29.Ass.pl. 19.14.E.3.Quare imp.45. 14.H.4.2.3.9.E.3.fo.26. 1.E.3.c.12. 34.E.3.c.15. lib.2. fol.31.32. in Seignior Cromwels case.

Bracton lib.4.fol.214. Britton cap.32.& 47. Bracton lib.4.fol.22. Regist.Iudic.68.73.

Franktenement. Here it appeareth that Tenant in fee, Tenant in taile, and Tenant for life are said to haue a Franktenement, a Freehold, so called, because it doth distinguish it from termes of yeares, chattels vpon incertaine interests, lands in Villenage or Customarie, or Copyhold lands. Liberum autem tenementum dicitur ad differentiam Villenagii, & villanorum qui tenent Villenagium quia non habent actionem nec assisam, &c. item quod sit suum & non alienum, hoc est si teneat nomine alieno vt firmarius & ad terminum vel sicut creditor ad vadium. And note that Tenant by Statute Merchant, Statute Staple, or Elegit are said to hold land Vt liberum tenementum, vntill their debt be paid, and yet in troth they (as hath beene said) haue no Freehold, but a Chattle, which shall goe to the Executors, and the Executors also if they be ousted shall haue an Assise. But (vt) is similitudinarie, because they shall by the Statutes haue an Assise as Tenant of the Freehold shall haue, and to that respect hath a similitudde of a Freehold, but Nullum simile est idem.

v.42 a.

12.Ass.p.7.W.2.cap.18. Stat.de mercatoribus an. 13.E.1. 27.E.3.cap.9. 23.H.8.cap.6. F.N.B.178.7.

Chap. 7. Sect. 58.

Tenant for terme of yeares.

Lou home lessa terres, &c. Lessa and Lease is (a) deriued of the Saxon word leapum, or leasum, for that the Lessee commeth in by lawfull meanes (b) and dimittere is in French layssier to depart with or forgoe.

(a) Mirror cap.2.Sect.17. Bracton lib.2.cap.26. & lib.4.fol.220.Fleta lib.3. cap.12. & lib.5.cap.34.
(b) For the word (dimitto) see sect.531.

When Littleton wrote, many persons might make leases for yeares, or for life, or

Tenant pur terme dans ē lou home lessa terres ou tenements a vn auter pur terme de certaine ans solonque le number des ans que est accords perenter le Less

Tenant for terme of yeares is, where a man letteth lands or tenements to another for terme of certaine yeares after the number of yeares that is accorded between the

for

ſoꝛ ꝛ le Leſſée. Et quant le Leſſée entrer per foꝛce del leas, donque il eſt Tenant pur terme des ans. Et ſi le Leſſoꝛ en tiel caſe reſerue a luy vn annuäll rent ſur tiel leas il poit eſlier a diſtrainer pur le rent en les tenements leſſes, ou il poit auer vn action de debt pur les arrerages enuerz le Leſſée. Mes en tiel caſe il couient que le Leſſour ſoit ſeiſie de meſmes les tenemẽts al temps del leas, car il eſt bone plée pur le Leſſée adire, q̃ le Leſſoꝛ nauoit riens en les tenements al tẽps de le leas ſinon que le leas ſoit fait per fait endent, en quel caſe tiel plée donque ne giſt en le bouch le Leſſée a pleader.

Leſſor and the Leſſee, and when the Leſſee entreth by force of the leaſe, then is hee Tenant for terme of yeares, and if the Leſſor in ſuch caſe reſerue to him a yearely rent vpon ſuch leaſe, hee may chuſe for to diſtraine for the rent in the Tenements letten, or elſe he may haue an Action of debt for the Arrerages againſt the Leſſee. But in ſuch caſe it behoueth that the Leſſor bee ſeiſed in the ſame tenements at the time of this leaſe, for it is a good plee for the Leſſee to ſay, that the Leſſor had nothing in the tenements at the time of the leaſe, except the leaſe be made by Deed indented, in which caſe ſuch plee lieth not for the Leſſee to plead.

liues at their will and pleaſure, which now cannot make them firme in Law. And ſome perſons may now make leaſes foꝛ yeares, oꝛ foꝛ life oꝛ liues (obſeruing due incidents) firme ꝛ good in Law, who of themſelues could not ſo doe when Littleton wꝛote, and this by foꝛce of diuers Acts of Parliament (c) as namely 32. H. 8. 1 Eliz. 13. Eliz. 18. Eliz and 1. Iac. Regis, of which ſtatutes one is enabling, and the reſt are diſabling. When Littleton wꝛote, Biſhops with the confirmation of the Deane and Chapter, Maſter ꝛ Fellowes of any College, Deanes and Chapters, Maſter oꝛ Gardian of any Hoſpitall, and his Brethren, Parſon oꝛ Vicar, with the conſent of the Patron and Oꝛdinarie, Archdeacon, Pꝛebend, oꝛ any other body Politique, Spirituall and Eccleſiaſticall (Concurrentibus hiis quæ in jure requiruntur) might haue made leaſes foꝛ liues oꝛ yeares without limitation oꝛ ſtint. And ſo might they haue made gifts in tailes oꝛ ſtates in fée at their will and pleaſure, whereupon not onely great decay of Diuine Seruice, but Dilapidations and other inconueniences enſued, and therefoꝛe they were diſabled ꝛ reſtrained by the ſaid Acts of 1. Eliz. 13. Eliz. and 3. Iac. Regis to make any State oꝛ Conueyance to the

(c) 32. H. 8 ca. 28. 1. Eliz. not printed but in the abridgement. 13. Eliz. cap. 10. 18. Eliz. cap. 6. 1. Iac. cap. 3.

Lib. 5. fol. 14. caſe de Eccleſiaſticall perſons. Lib. 11. fol. 66. Magdalen College caſe. Leueſque de Sarums caſe, lib. 10. fol. 60. 61.

King at all, oꝛ to the ſubiect, but there is excepted out of the reſtraint oꝛ diſabilitie, leaſes foꝛ three liues, oꝛ one and twentie yeares; with ſuch reſeruation of Rent, and with ſuch other pꝛouiſions and limitations as hereafter ſhall appeare. Alſo they may make grants of anciens Offices of neceſſitie with ancient fees, Concurrentibus hiis quæ in jure requiruntur, foꝛ thoſe grants are not within the ſtatute of 32. H. 8. but by conſtruction, they are not reſtrained by the Statutes of 1. Eliz. oꝛ 13. Eliz. becauſe theſe ancient offices be of neceſſitie, and with the ancient fees, and ſo no diminution of reuenue.

There be three kindes of perſons that at this day may make leaſes foꝛ three liues, &c. in ſuch ſoꝛt as hereafter is expꝛeſſed, which could not ſo doe when Littleton wꝛote, viz. Firſt, any perſon ſeiſed of an eſtate taile in his owne right. Secondly, any perſon ſeiſed of an eſtate in Fée ſimple in the right of his Church. Thirdly, any husband and wife ſeiſed of any eſtate of inheritance in Fée ſimple oꝛ Fée taile in the right of his wife, oꝛ iointly with his wife before the couerture oꝛ after, viz. the tenant in taile, by Deed to binde his iſſues in taile, but not the reuerſion oꝛ remainder, the Biſhop, &c. by Deed without the Deane and Chapter to binde his Succeſſours, the husband and wife by Deed to binde the wife and her and their heires, and theſe are made good by the ſtatute of 32. H. 8. which inableth them thereunto. But to the making good of ſuch leaſes by the ſaid ſtatute, there are nine things neceſſarily to be obſerued belonging to them all, and ſome other to ſome of them in particular.

mo: 42: a, b

32: H8: 28: ca:

Firſt, the leaſe muſt be made by Deed indented, and not by Deed, Poll, oꝛ by Parroll.

Lib. 5. fol. 6. Seig. Mowy-joyes caſe.

Secondly, It muſt be made to begin from the day of the making thereof, oꝛ from the making thereof.

Thirdly, If there be an old leafe in being, it muſt be ſurrendred or expired, or ended within a yeare of the making of the leaſe, and the ſurrender muſt be abſolute and not conditionall.

Lib.5. fol.2. Elmers caſe.

Fourthly, There muſt not be a double leaſe in being at one time, as if a leaſe for yeares be made according to the Statute, he in the reuerſion cannot expulſe the Leſſee, and make a leaſe for life or liues according to the Statute, non è conuerſo, for the words of the Statute be, to make a leaſe for three liues, or one and twentie yeares, ſo as one or the other may be made, and not both.

Fifthly, It muſt not exceed three liues, or one and twentie yeares, from the making of it, but it may be for a leſſer terme or fewer liues.

Sixthly, It muſt bee of Lands, Tenements, or Hereditaments, manurable or corporeall, which are neceſſarie to be letten, and whereout a rent by Law may bee reſerued, and not (d) of things that lye in grant, as Auowſons, Faires, Markets, Franchiſes, and the like whereout a rent cannot be reſerued.

(d) Lib.5 fol.2. Iewels caſe. 17.E.3.75. 9.Aſſ. 24. 14 E.3. Scire facias 22. 10.H.6.2. 3.H.6.21.

Seuenthly, It muſt be of Lands or Tenements which haue moſt commonly bœn letten to farme, or occupied by the farmers thereof by the ſpace of 20. yeares next before the leaſe made, ſo as if it be letten for 11. yeares at one or ſeuerall times within thoſe 20. years it is ſufficient. A grant (e) by coppy of Court roll in fee for like or yeares is a ſufficient letting to farme within this ſtatute, for he is but tenant at will according to the cuſtome, & ſo it is of a leaſe at will by the Common Law, but thoſe lettings to farme muſt be made by ſome ſeiſed of an eſtate of Inheritance, & not by a Gardian in Chiualry, tenant by the curteſie, tenant in dower or the like.

(e) Lib.6.fol.37. Deane and Chapter of Worceſters caſe.

Eightly, that vpon euerie ſuch leaſe there be reſerued yearely during the ſame leaſe due and payable to the Leſſors their heires and ſucceſſors, &c. ſo much yearely farme or rent, or more, as hath bœne moſt accuſtomably yeelded or paid for the lands, &c. within twentie yeares next before ſuch leaſe made. Hereby firſt it appeareth (as hath bœne ſaid) that nothing can be demiſed by authoritie of this Act, but that whereout a rent may be lawfully reſerued. Secondly, That where not only a yearly rent was formerly reſerued, but things not annuall, as heriots, or any fine or other profit at or vpon the death of the Farmor, yet if the yearely rent bee reſerued vpon a leaſe made by force of this ſtatute, it ſufficeth by the expreſſe words of the act. Thirdly, If he reſerue more than the accuſtomable rent it is good alſo by the expreſſe letter of the Act; but if twentie acres of land haue bœne accuſtomably letten, and a leaſe is made of thoſe twentie, and of one acre which was not accuſtomably letten, reſeruing the accuſtomable yearely rent, and ſo much more as exceeds the value of the other acre, this leaſe is not warranted by the Act, for that the accuſtomable rent is not reſerued, ſeeing part was not accuſtomably letten, and the rent iſſueth out of the whole. Fourthly, if tenant in taile let part of the land accuſtomably letten, and reſerue a rent pro rata, or more, this is good, for that is in ſubſtance the accuſtomable rent. Fifthly, If two Coparceners be Tenants in taile of twentie acres euerie one of equall value, and accuſtomably letten, and they make partition, ſo as each haue ten acres, they may make leaſes of their ſeuerall parts each of them, reſeruing the halfe of the accuſtomable rent. Sixthly, if the accuſtomable rent had bœne payable at foure dayes or feaſts of the yeare, yet if it be reſerued yearely payable at one feaſt, it is ſufficient, for the words of the Statute be, reſerued yearely.

Lib.6.fol.37.38. Deane and Chapter of Worceſters caſe.

Lib.5.fol.6. Seignior Mountjoyes caſe.

Lib.5.fol.5. Seignior Mountjoyes caſe, lib.6. fol.37.

Lord Mountjoyes caſe, vbi ſupra.

Ninthly, nor to any leaſe to be made without impeachment of waſte, therefore if a leaſe bee made for life, the remainder for life, &c. this is not warranted by the ſtatute, becauſe it is diſpunishable of waſte. But if a leaſe be made to one during three liues, this is good, for the occupant if any happen, ſhall be puniſhed for waſte. The words of the Statute be (ſeiſed in the right of his Church) yet a Biſhop that is ſeiſed jure Epiſcopatus, a Deane of his ſole poſſeſſions in jure Decanatus, an Archdeacon in jure Archidiaconatus, a Prebendarie and the like are within the Statute, for euerie of them generally is ſeiſed in jure Eccleſiæ.

Deane and Chapter of Worc. caſe, vbi ſupra.

Deane and Chapter of Worc. caſe, vbi ſupra.

But a Parſon and Vicar are excepted out of the ſtatute of 32. H.8. and therefore if either of them make a leaſe for three liues, &c. of lands accuſtomably letten, reſeruing the accuſtomed rent, it muſt be alſo confirmed by the Patron and Ordinarie, becauſe it is excepted out of 32. H.8. and not reſtrained by the ſtatutes of primo or 13. Eliz. And what hath bœne ſaid concerning a leaſe for three liues, doth hold for a leaſe for one and twentie yeares.

3.E.6.1. Mar.tit.leaſes, &c.62.

Thus much ſhall ſuffice to haue ſpoken of the inabling ſtatute of 32. H.8. the better to inable the Reader to vnderſtand both this and that which followes. Now to ſpeake ſomewhat of the diſabling Statutes of 1. Eliz. and 13. Eliz. the words of the exception out of the reſtraint and diſabilitie of 1. Eliz. are, Other than for the terme of twentie one yeares, or three liues, from ſuch time as any ſuch grant or aſſurance ſhall be giuen, whereupon the old and accuſtomed yearely rent, or more, ſhall be reſerued: And to that effect is the exception in the Statute of 13. Eliz. Firſt, it is to be vnderſtood, that neither of theſe diſabling Acts, nor any other, doe in any ſort alter or change the inabling Statute of 32. H.8. but leaueth it for a patterne in many things for leaſes to be made by others. Secondly, It is to be knowne, that no leaſe made according to the exception of 1. Eliz. or 13. Eliz. and not warranted by the Statute of 32. H.8. if it be made by

by a Bishop, or any sole Corporation, but it must be confirmed by the Deanes and Chapters, or others that haue interest, as hath beene said in the case of the Parson and Vicar, but examples doe illustrate. If a Bishop make a lease for 21. yeares, and all those yeares being spent sauing three or more, yet may the Bishop make a new lease to another for twentie one yeares, to begin from the making, according to the exception of the Statute, but not a Lease for life or liues, as hath beene said, and this concurrent Lease hath beene resolued to be good, as well vpon the exception of 1. Eliz. in the case of Bishops, as vpon 13. Eliz. which extend to spirituall and ecclesiasticall Corporations, aggregate of many, as Deanes and Chapters, &c. which 32 H 8. did not: but in the case of the concurrent lease, in the case of the Bishop it must be confirmed. Also the exception of 1. Eliz. and 13. Eliz. doth differ from the statute of 32. H. 8. for the leases for yeares to be made according to the exceptions of the statutes of 1. and 13. Eliz. must begin from the making and not from the day of the making, but by force of 32. H. 8. from the day of the making. And although the statutes of the first or thirteenth of Eliz. doe not appoint the Lease to be made by writing, yet must it therein and in the other eight properties or qualities before mentioned and required by 32. H. 8. follow the patterne thereof (the concurrent Lease onely except.) Although the exception in 1. and 13. Eliz. concerning the accustomed rent is more generall than that of 32. H. 8. and there is not any prouision for Leases made disputable of waste, &c. yet must the patterne of 32. H. 8. be followed: for Leases without impeachment of waste made by such Spirituall and Ecclesiasticall persons are vnreasonable and causes of dilapidations. Thus much haue I thought good to lead the studious Reader by the hand, and to conduct him in the right way, And to put all these things together vpon consideration had of all the statutes, which otherwise might haue prima facie seemed to him a diffuse and darke labyrinth. And albeit it be prouided by the said Acts of 1. and 13. Eliz. that all grants, &c. leases, &c. made, &c. (other than leases for three liues, or one and twentie yeares according to these Acts) should be vtterly void and of none effect, to all intents, constructions and purposes, yet grants, or leases, &c. not warranted by those acts are not void, but good against the Lessor, if it be a sole Corporation: or so long as the Deane or other head of the Corporation remaine, if it be a Corporation aggregate of many: for the statute was made in benefit of the Successor. But let vs now returne to our Author.

lib. 5. Laytons case. v. 40. b3.

Lib. 3. fo. 59. 60. Lincolns College case. P. 39. Eliz. Inter Hunt & Singleton, ibidem.

¶. *Homelessa.* Here Littleton putteth this case where one letteth, &c. It is therefore necessarie to be seene what the Law is where diuers ioyne in a Lease. If the Tenant of the Land, and a stranger which hath nothing in the Land ioyne in a Lease for yeares by Deed indented of one and the selfe same Land, this is the Lease of the tenant onely, and the confirmation of the stranger, and yet the Lease as to the stranger worketh by conclusion.

Vide sect. 346. 11. H. 4. 13. 5. E. 4. 4. 2. 27. H. 8. 18.

If two seuerall tenants of seuerall Lands, ioyne in a Lease for yeares by Deed indented, these be seuerall Leases and seuerall Confirmations of each of them, from whom no interest passeth, and worke not by way of conclusion in any sort, because seuerall interests passe from them. B. tenant for life of C. and he in the remainder or reuersion in fee, hauing seuerall estates in the one and the same Land, ioyne in a Lease for yeares by Deed indented, this demise shall worke in this sort, during the life of C. it is the Lease of B. and Confirmation of him in the reuersion or remainder, and after the decease of C. it is the Lease of him in the reuersion or remainder, and the Confirmation of B. for seeing the Lessors haue seuerall estates, the Law shall construe the Lease to moue out of both their estates respectiuely, and euerie one to let that which he lawfully may let, and not to be the lease onely of Tenant for life, and the Confirmation of him in the remainder or reuersion, neither is there any conclusion in this case, as shall be said hereafter. Tenant for life and he in the remainder in fee, made a Lease for yeares by Deed indented, the Lessee was ejected, and brought an Ejectione firmæ, and declared vpon a demise made by tenant for life and him in remainder, and vpon not guilty pleaded, this speciall matter was found, and that tenant for life was liuing, and it was adiudged (a) against the pl. for during the life of the tenant (as hath beene said) it is the Lease of the tenant for life, and therefore during his life he ought to haue declared of a Lease made by him, and after his decease he ought to declare of a Lease made by him in remainder. (b) And the Deed indented could be no Estoppell in this case, because there passed an interest from them both. And whensoeuer any interest passeth from the partie, there can be no Estoppell against him, and (c) so it was adiudged. Hereby you shall vnderstand your bookes the better which treat of those matters, and accordingly it was adiudged that where Tenant in taile and he in the remainder in fee ioyned in a grant of a rent charge by Deed in fee, and after tenant in taile died without issue, the Grantee distrained and auowed by force of a grant from him in the remainder, and vpon non concessit, the Jurie found the speciall matter, and it was adiudged for the Auowant; for euerie one granted according to his estate and interest.

Smyth's case. Rep. 6. fol. 14.

(a) 27. H 8. f. 13. 2. 13. H. 7. 14. 2. H. 5. 7. Lib. 1. fol. 76. Bredons case.

(b) Mich. 36. & 33. Eliz. in the Kings Bench. Vide Mich. 6. & 7. Eliz. Dier 234. 235.

(c) Hil. 44. Eliz. Rot. 1456. in Communi Banco inter Ellies & Cowne.

Leases for liues or yeares are of three natures, some be good in Law; some be voidable by

entrie, and some void without entrie. Of such as be good in Law, some be good at the Common Law as made by tenant in fee, whereof Littleton here putteth his case, some by act of Parliament, as Tenant in taile, a Bishop seised in fee in the right of his Church alone without his Chapter, a man seised in Fee simple or Fee taile in the right of his wife together with his wife (as hath beene said) may by Deed indented make leases for 21. yeares or three liues in such manner and forme as hath beene said and by the Statute (d) is limited; all which were voidable by the Common Law when Littleton wrote, and now are made good by Parliament. 44.a

(d) 32.H.8 cap 28.

An infant seised of land holden in Socage, may by custome make a lease at his age of 15. yeares, and shall binde him, which lease was voidable by the Common Law; Voidable, some by the Common Law, after the death of the Leasor as of Tenant in taile a Bishop, &c. Or after the death of the husband (intended of leases not warranted by the said statute of 32. H.8.) Some voidable by Act of Parliament, as by a Bishop though it be confirmed by Deane and Chapter, if it be not warranted by the statute of 32.H.8. and so of a Deane and Chapter after the death of the Deane; Some voidable at times by the Lessor himselfe or his heires, as by an infant and the like. Some void in futuro, and some void in præsenti. In futuro, as if a Tenant in taile make a lease for yeares and die without issue, it is void, as to them in reuersion or remainder, though it be made (e) according to the said statute. If a Prebend, Parson or Vicar make a lease for yeares, it is void by death; if it bee not according to the Statutes. Otherwise it is of a lease for life, for that is voidable, & sic de similibus.

(e) 33.H.8. Dier lib.7. fol. 59.60. in Lincolne College case. Hunts case vouched.

Some void in præsenti, as if one make a lease for so many yeares as he shall liue, this is void in præsenti for the incertaintie. Et sic in similibus, whereof Littleton himselfe will teach you next and immediately, and I know you would now gladly heare him.

¶ *Pur terme.* Pro termino, Terminus in the understanding of the Law doth not onely signifie the limits and limitation of time, but also the estate and interest that passeth for that time. As if a man make a lease for 21. yeares, and after make a lease to begin à fine & expiratione prædicti termini 21. annorum dimiss. and after the first lease is surrendred, the second lease shall begin presently, but if it had beene to begin Post finem & expirationem prædict' 21. annorum, in that case although the first terme had beene surrendred, yet the second lease should not begin, till after the 21. yeares be ended by effluxion of time, and so note the diuersitie betweene the terme for 21. yeares, and 21. yeares; and (f) herewith agreeth the Lord Pagets Case.

Pl. Com. Wrotesl. 138. 35.H.8.tit. Exposition des parols 44. lib.1.fol.145. in Dauenports case.

(f) Lib.1.fol.154. in the Rector of Chedingtons case.

(g) Words to make a lease be, demise, grant, to fearme let, betake, and whatsoeuer word amounteth to a grant may serue to make a lease. In the Kings case (h) this word Committo doth amount sometime to a grant, as when he saith Commisimus W. de B. officium Seneschalciæ, &c. quamdiu nobis placuerit, and by that word also he may make a lease: and (i) therefore à fortiori a common person by that word may doe the same.

(g) Vide Sect.531.
(h) Regist. F.N.B.270.c.

(i) 8.H.6.34.

¶ *De certaine ans.* For regularly in euerie lease for yeares the terme must haue a certaine beginning, and a certaine end, and herewith (k) agreeth Bracton, terminus annorum certus debet esse & determinatus. And Littleton is here to be understood, first, that the yeares must be certaine when the lease is to take effect in interest or possession. For before it takes effect in possession or interest, it may depend vpon an incertainty, viz. vpon a possible contingent before it begin in possession or interest, or vpon a limitation or condition subsequent. Secondly, albeit there appeare no certaintie of yeares in the lease, yet if by reference to a certaintie it may be made certaine it sufficeth, Quia id certum est quod certum reddi potest. For example of the first: If A. seised of lands in fee grant to B. that when B. payes to A. xx. shillings, that from thenceforth hee shall haue and occupie the land for 21. yeares, and after B. payes the xx. shillings, this is a good lease for 21. yeares from thencefoorth. For the second, if A. leaseth his land to B. for so many yeares as B. hath in the Mannor of Dale, and B. hath then a terme in the Mannor of Dale for 10. yeares, this is a good lease by A. to B. of the land of A. for 10. yeares. If the Parson of D make a lease of his glebe for so many yeares as he shall be Parson there, this cannot be made certaine by any meanes, for nothing is more vncertaine than the time of death, Terminus vitæ est incertus, & licet nihil certius sit morte, nihil tamen incertius est hora mortis. But if hee make a lease for three yeares, and so from three yearrs to three yeares, so long as he shall be Parson, this is a good lease for six yeares, if hee continue Parson so long, first for three yeares, and after that for three yeares; and for the residue vncertaine.

(k) 14.H.8.14.3.Mar. leases Br.67.2.Mar.ibid. 67.Say & Fullers case, Pl. Com.273..& Weldens case ibid.4.H.6.12. 21.H. 7.38. Vid.le case deleuesque de Bathe. lib.6. fol. 34.35. Bract.lib.2. ca.9. Vid. lib.1.fo.155.156. Rector de Chedingtons case.

Bract.lib.2.cap.9. So resolued Hill. 26. Eliz.Rot.935.in Com. Banco.

If a man maketh a lease to I.S. for so many yeares as I. N. shall name, this at the beginning is incertaine, but when I.N. hath named the yeares, then it is a good lease for so many yeares.

Pl. Com. Say & Fullers case. Mirror ca.2.sect.17. & cap.5.sect.1.

A man maketh a lease for 21. yeares if I. S. liue so long, this is a good lease for yeares, & yet is certaine in incertaintie, for the life of I.S. is incertaine. See many excellent cases concerning this matter put in the said case of the Bishop of Bath and Wells. By the ancient Law of England for many respects a man could not haue made a lease aboue 40. yeares at the most, for

lib 6 Ewes de Bath

then was it said that by long leases many were prejudiced, and many times men disherited, but that ancient Law is antiquated.

In the eye of the Law any estate for life being as Littleton hath said, an estate of Frœhold, against whom a Præcipe quod reddat doth lie, is an higher and greater estate than a lease for yeares, though it be for a thousand or more, which neuer are without suspition of fraud, and they were the lesse valuable for that at the Common Law they were subiect vnto, & vnder the power of the tenant of the frœhold, the learning whereof standeth thus, and is worthy to bee knowne. When Littleton wrote, if a man had made a lease for yeares by writing, and he that had the frœhold had suffered himselfe to be impleaded in a reall action by collusion to barre the Lessee of his terme, and made default, &c. The Statute of Glouc' gaue the Lessee for yeares some remedy by way of receipt, and a triall whether the demandant did moue the plea by good right or collusion, and if it were found by collusion, then the termor should enioy his tearme, and the execution of the iudgement should stay vntill after the tearme ended. But this Statute extended not to 5. cases. First, if the lease were without writing, for the words of this act are, (so that the termor may haue recouerie by Writ of Couenant.) 2. It extended not but to a recouerie by default. 3. The termor could not be relæued by this statute, vnlesse he knew of the recouerie, and were receiued, &c. 4. By the better opinion of bookes, it extended not to tenants by Statute Merchant, Statute Staple, or Elegit. 5. Not to gardian. (l) But now the statute of 21. H. 8 doth giue remedie in all the said cases, sauing the case of the gardian, and giueth them power to falsifie all manner of recoueries had against the tenants of the frœhold vpon fained and vntrue titles, &c. Now the (m) statute saith, that it was a doubt before that statute whether a Termor for yeares might falsifie or no: but yet it seemeth by the better opinion of bookes in so great varietie, that the hauing but a chattell, was not able by the Common Law to falsifie a couenous recouerie of the frœhold, because he could not haue the thing that was recouered. (a) And Thurning and Hankford doe hold that a gardian is not within the statute of Glouc'.

Lib 11. fol. 33.

(l) 21. H. 8. ca. 15.

(m) That a termor might falsifie at the Common Law. Vid. 19. E. 3. Ass. 82. 21. E. 3. 1. 7. H. 7. 11. b. 1. H. 7. 9. b. Pl. Com. 83. 10. E. 3. 46. 19. E. 3. resceit 112. That he could not. 30. H. 6. Fauxer recouerie 9. 43. Ass. 41. 26. H. 8. 2. 9. E. 4. 38. F. N. B. 198. E. 14. H. 8. 4. lib. 9. fo. 135. Ascoughes case.

(a) 7. H. 4. 12. 33. H. 8. Dier 52.

If two Coperceners be, and one of them let her part to another for yeares, and after vpon a writ of partition brought against the Lessor too little is allotted to the Lessor, it is holden by some that the Lessee cannot auoid it, for that it is made by the oath of men, and iudgement is thereupon giuen that the partition shall remaine firme and stable. But if there be two Copercencrs of three acres of land, euerie one of equall value, and the one Copercener letteth her part, and after make partition, and one acre is allotted onely to the Lessor, the Lessee is not bound hereby, but he may enter and take the profits of another halfe acre, for that of right being vnto him. Thus much haue I thought good to set downe, for it sufficeth not to know what the Law is in these cases, vnlesse he vnderstand the reason and cause thereof.

And albeit (as hath beene said) a lease for yeares must haue a certaine beginning, and a certaine end, yet the continuance thereof may be incertaine, for the same may cease and reuiue againe in diuers cases. As if tenant in taile make a lease for yeares reseruing &c. shillings, and after take a wife and die without issue, now as to him in the reuersion the lease is meerly void, but if he endow the wife of tenant in taile of the land, (as she may be though the estate taile be determined) now is the lease as to the tenant in dower (who is in of the state of her husband) (a) reuiued againe as against her, for as to her the estate taile continueth, for she shall be attendant for the third part of the rent seruices, and yet they were extinct by act in Law. So it is if tenant in taile make a lease for yeares vt supra, and dieth without issue, his wife enseint with a sonne, he in the reuersion enter, against him the lease is void, but after the sonne be borne the lease is good, if it be made according to the (b) statute, and otherwise is voidable.

(a) 10. E. 3. 26. 34. Ass. 15. 23. E. 3. Dower 130. v. Rep. 7. fo. 36. 9. Bedford's case.

(b) 32. H. 8. ca. 28.

The King made a gift in taile of the Mannor of Eastfarleigh in Kent, to W. to hold by Knights seruice; W. made a lease to A. for thirtie six yeares, reseruing thirteene pound rent; W. died, his son and heire of full age, all this was found by office: as to the King this lease is not of force, for he shall haue his primer seisin, as of lands in possession, but after liuerie, the Lessee may enter; and if the issue in taile accept the rent, the lease shall binde him, for the Kings primer seisin shall not take away the election of the issue in taile, for it may be that the rent was better than the land: (c) and so it was adiudged in Awstens case, as I had it of the report of Master Edmond Plowden, a graue and learned Apprentice of Law.

(c) Pasch. 2. & 3. Ph. & Mar. in an information of Intrusion in the Exchequer against Austen. Vid. Dier pasch. 2. & 3. Ph. & Mar. 115. 13. Eliz. ca. 10.

If tenant in fee take wife, and make a lease for yeares, and dieth, the wife is endowed, she shall auoid the lease, but after her decease the lease shall be in force againe. But if the Patron grant the next auoidance, and after Parson, Patron, and Ordinarie, before the Statute, (d) had made a lease of the glebe for yeares, and after the Parson dieth, and the Grantee of the next auoidance had presented a Clerke to the Church, who is admitted, instituted, & inducted, and dieth within the terme, the Patron presents a new Clerke, and he is admitted, instituted, and inducted, albeit he commeth in vnder the Patron that was partie to the lease, yet because the last Incumbent, who had the whole state in him, auoided the Lease, it shall not reuiue againe, no more than if a feme couert leuy a fine alone, if the husband enter and auoid the fine, and die, the whole estate is so auoided as it shall not binde the wife after his death.

(d) 6. E. 6. Dier 72. 17. E. 3. 52. 17. Ass. p. 17. 2. R. 3. 20. 9. H. 6. 32.

If

2.E.3.8. per Scroope.

If a woman be endowed of an Aduowſon which is appropriated, and the preſent, and her Incumbent is admitted, inſtituted, and inducted, albeit the Incumbent die, yet is the appropriation wholly diſſolued, becauſe the Incumbent which came in by preſentation, had the whole ſtate in him, and ſo was it adiudged, as the caſe is to be intended.

Pl.Com.437.a.

Tenant in taile make a leaſe for foꝛtie yeares, reſeruing a rent, to commence ten yeares after; Tenant in taile die, the iſſue enter and infeoffe A. ten yeares expire, the Leſſee enter, if A. accept the rent, the leaſe is good, for he ſhall haue the ſame election that the iſſue in taile had, either to make it good, oꝛ to auoid it, ſo as it could not be preciſely affirmed, whether by the entrie of the iſſue this executoꝛie leaſe was auoided, but it dependeth incertainly vpon the will of the Feoffee. But now I know you are deſirous to heare Littleton who is ſpeaking to you.

¶ *Et quant le leſſee enter per force del leaſe, donques il eſt tenant pur terme des ans.* And true it is, that to many purpoſes he is not Tenant foꝛ yeares vntill he enter: as a releaſe made to him is not good to him to increaſe his eſtate, before entrie; but he may releaſe the rent reſerued before entrie, in reſpect of the priuitie. Neither can the Leſſoꝛ grant away the reuerſion by the name of the reuerſion, before entrie. vide Sect. 567. But the leſſee before entrie hath an intereſt, intereſſe termini grantable to another, vide Sect. 319. And albeit the Leſſoꝛ die before the Leſſee enters, yet the Leſſee may enter into the lands, as our Authoꝛ himſelfe holdeth in this Chapter. And ſo if the Leſſee dieth before he entred, yet his executoꝛs oꝛ adminiſtratoꝛs may enter, becauſe he preſently by the leaſe hath an intereſt in him: And if it be made to two, and one die before entrie, his intereſt ſhall ſuruiue. Vid. Sect. 281.

V. Sect. 454.455.

fol. 66

He that hath a leaſe foꝛ yeares, hath it either in his owne right, whereof Littleton hath here ſpoken, oꝛ in anothers right, and that in diuers manners, as a man may haue a terme foꝛ yeares in the right of his wife, whereof the husband hath power to diſpoſe at any time during his life, and if he ſuruiueth his wife, the Law doth giue the leaſe to him. But if hee make no diſpoſition thereof, and his wife ſuruiue him, it remaineth with the wife: but of this in another place moꝛe fully.

V. Sect. 665 more fully of this matter.

If a man be poſſeſſed of a terme of foꝛtie yeares in the right of his wife, and maketh a leaſe foꝛ twentie yeares, reſeruing a rent, and die, the wife ſhall haue the reſidue of the terme, but the executoꝛs of the husband ſhall haue the rent, foꝛ it was not incident to the reuerſion, foꝛ that the wife was not partie to the Leaſe. So note, a diſpoſition of part of the terme is no diſpoſition of the whole. But if the husband grant the whole terme, vpon condition that the Grantee ſhall pay a ſumme of money to his Executoꝛs, &c. the husband die, the condition is broken, the Executoꝛs enter, this is a diſpoſition of the terme, and the wife is barred thereof, foꝛ the whole intereſt was paſſed away.

Hil.17.El. in the Kings Bench.

If a leaſe be made to a baron and feme foꝛ terme of their liues, the remainder to the Executoꝛs of the ſurniuoꝛ of them, the husband grant away this terme and dieth, this ſhall not bar the wife, foꝛ that the wife had but a poſſibilitie and no intereſt.

37.Aſſ.p.11. Pl. Com.418.b.

If the husband and wife bee ejected of a terme in the right of his wife, and the husband bring an Ejectione firmæ in his owne name, and haue iudgement to recouer, this is an alteration of the terme, and veſteth it in the husband.

If a leaſe foꝛ yeares be made to a Biſhop and his Succeſſoꝛs, yet his Executoꝛs oꝛ Adminiſtratoꝛs ſhall haue it in auter droit, foꝛ regularly no Chattell can goe in ſucceſſion in a caſe of a ſole Coꝛpoꝛation, no moꝛe than if a Leaſe be made to a man and his heires, it can goe to his heires. But let vs returne to Littleton.

Bi.5.fo.1. Claytons caſe 12.Eliz. Dyer 286.

Touching the time of the beginning of a leaſe foꝛ yeares, it is to be obſerued, that if a leaſe be made by Indenture, bearing date 26. Maii, &c. to haue and to hold foꝛ twentie one yeares, from the date, oꝛ from the day of the date, it ſhall begin on the twentie ſeuenth day of May. If the leaſe beare date the twentie ſix day of May, &c. to haue & to hold from the making hereof, oꝛ from henceforth, it ſhall begin on the day in which it is deliuered, foꝛ the woꝛds of the Indenture are not of any effect till the deliuerie, and thereby from the making, oꝛ from henceforth take their firſt effect. But if it be à die confectionis, then it ſhall begin on the next day after the deliuerie. If the Habendum be foꝛ the terme of twentie one yeares, without mentioning when it ſhall begin, it ſhall begin from the deliuerie, foꝛ there the woꝛds take effect, as is afoꝛeſaid. If an Indenture of leaſe beare date, which is void oꝛ impoſſible, as the thirtieth day of Febꝛuarie, oꝛ the foꝛtieth of March, if in this caſe the terme be limited to begin from the date, it ſhall begin from the deliuerie, as if there had beene no date at all. (a) And ſo it is, if a man by his Indenture of leaſe, either recite a leaſe which is not, oꝛ is void, oꝛ miſrecite a leaſe in point materiall which is in eſſe, To haue and to hold from the ending of the foꝛmer leaſe, this leaſe ſhall begin in courſe of time from the deliuerie thereof.

14.El. Dyer 307.5. El. Dyer 218.

Li.2.fo.5.Goddards caſe.

(a) Pl.Com.148. 3.E.6. tit. Leaſes, Br.62. 3.El. Dyer 195. 1.Mar. Dyer 116.

¶ *Et ſi le leſſor en tiel caſe reſerue a luy vn annual rent ſur tiel leaſe, il poet eſlier a diſtreyner pur le rent, ou il poet auer action de debt pur les arrerages.*

¶ *Reſerue*

¶ *Reserue a luy vn annual rent, &c.* First it appeareth (b) here by Littleton that a rent must be reserued out of Lands or Tenements, whereunto the Lessor may haue resort or recourse to distreine, as Littleton here also saith, and therefore a rent cannot be reserued by a common person out of any incorporeall inheritance, as Aduowsons, Commons, Offices, Corodie, mulcture of a Mill, Tythes, Faires, Markets, Liberties, Priuileges, Franchises, and the like. (c) But if the Lease be made of them by Deed for yeares, it may be good by way of Contract to haue an action of debt, but distreine the Lessor cannot. Neither shall it passe with the grant of the reuersion, for that it is no rent incident to the reuersion. But if any rent be reserued in such case vpon a Lease for life, it is vterly void, for that in that case no action of debt doth lye. But if a man demiseth the vesture or herbage of his land, he may reserue a rent, for that the thing is mainorable, and the Lessor may distreine the cattell vpon the land: And so a reuersion, or a remainder of lands or tenements may be granted reseruing a rent, for the apparant possibilitie that it may come in possession, and they are tenements within the words of Littleton.

(b) Li. 7. fo. 23. Burt case. Lib. 10 fo. 59. 60.
(c) 30. Ass. p. 5. 42. Ass. 20. 20 E. 4. 10. 1. H. 4. 1. 2. 3. 11. H. 4. 82. 19 E. 2. Fines 136. 44. E. 3. 45. 9 Ass 24. 26. Ass. 60. 14 E. 3 Scir fac. 122. 5. E. 3. 68. 17. E. 3. 75. 11. H. 4. 10. 3. H. 6. 21. 45. 10. H. 6. 12. 21 H. 6. 11. 5. H. 7. 32. 21. H. 7. 19. 17. E. 2. Ex. 112. 23. El. Dyer 377.

(a) It appeareth by Littleton, that reseruando is an apt word of reseruing a rent, and so is reddendo, soluendo, faciendo, inueniendo, dummodo. and the like.

(a) 40. E. 3. 47. 8. E. 3. 67. 21. E. 4. 62. 3. H. 6. 45. 31. Ass. p. 30. 3. Ass. 9. 26. Ass. 66. 32. E. 3. Br. 291. 8. E. 4. 8. 10. El. Dy. 276. Pl. Com. en Browning & Beestones case, fol. 131. 132, &c.

(b) And note a diuersitie betweene an exception (which is euer of part of the thing granted and of a thing in esse) for which, exceptis, saluo, præter, and the like be apt words; and a reseruation which is alwayes of a thing not in esse, but newly created or reserued out of the land or tenement demised. (c) Poterit enim quis rem dare & partem rei retinere, vel partem de pertinentiis, & illa pars quam retinet semper cum eo est & semper fuit. (d) But out of a generall a part may be excepted, as out of a Mannor, an Acre, Ex verbo generali aliquid excipitur, and not a part of a certaintie, as out of twentie Acres, one.

(b) 50. E. 3. 12. 13. Ass. 9. 38. E. 3. 10. 21. E. 3. 4. 34. Ass. 11. 29. E 3. 14. 3. H. 8. 45. 10. H. 6. 8. 41. 33. H. 6. 1. 35. H. 6. 34. 17. Ass. 14. H. 8. 1. 44. E. 3. 43. Pl. Com. 361.
(c) Bract. lib. 2. fol. 32. b. & fol. 249.
(d) 9. El. Dy. 264. 38. H. 6. 38. 14. H. 8. 1. 22. E. 3. 8. 2. E. 3. 36. 5. E. 3. 66. 34. Ass. 12.

It is further to be obserued that the Lessor cannot reserue to any other but to himselfe, for Littleton saith, reserue a luy, reserue to himselfe. (e) If two toyntenants be, & they make a lease for yeares by paroll, or deed poll reseruing a rent to one of them, this shall enure to them both, but if it be so reserued by Deed indented, it shall enure to him alone by way of conclusion.

(e) 25. E. 4. 4. 14. P. 7. Bre. 282. lib. 8. fo. 70. 71.

(f) Littleton here is putting of a case, and not making a lease, for then he would not reserue the rent to him, but to him and his heires, for otherwise the rent shall determine by his death, if he die within the terme. (g) But if he reserue a rent generally without shewing to whom it shall goe, it shall goe to his heires. If he reserue a rent to him and his Assignes, yet the rent shall determine by his death, because the reseruation is good but during his life. So it is if he reserue a rent to him and his Executors it shall end by his death, because the heire hath the reuersion, and the rent was incident to the reuersion. So if a man warrant land to B. and his Assignes, the Assignee must vouch during the life of B. for the warrantie continue but only during the life of B. for the warrantie is but for life, for want of words of inheritance. But if the warrantie be to B. his Heires and Assignes, so as he hath an inheritance therein, then his Assignee shall vouch after his decease. So if the rent be reserued to the Lessor his Heires and Assignes, so as it be incident to the inheritance, then shall all the Assignes of the reuersion enioy the same.

(f) Vid. Sect. 314. 215. 216, &c. 10. E. 4. 18. 11. E. 3. Ass. 85. 27. H. 8. 19. 21. H. 7. 25. 30. H. 8. Dyer 45.
(g) Mich. 5. Ia. in repl. inter Wooton & Edwin bankle Roy. Hil. 33. El. Rot. 1431. in bankle Roy enter Richmond & Butcher.

¶ *Annual rent.* So it is if the rent be reserued euerie two or three or more yeares. Of Rents Littleton doth excellently treat hereafter in his Chapter of rents, and therefore in this place thus much shall suffice.

¶ *A distreyner pur le rent.* Here it is necessarie to be seene of what things a distresse may be taken for a rent, and how the distresse ought to be demeaned. (h) First, it must be of a thing, whereof a valuable property is in some body, and therefore Dogs, Bucks, Does, Conies, and the like that are feræ naturæ cannot be distreined. Secondly, although it be of valuable propertie as a horse, &c. yet when a man or woman is riding on him, or an axe in a mans hand cutting of wood and the like, they are for that time priuileged and cannot bee distreined. (i) Thirdly, valuable things shall not be distreined for rent for benefit & maintenance of trades, which by consequent are for the Common-wealth, and are there by authoritie of Law, as a horse in a Smithes shop shall not be distreined for the rent issuing out of the shop, nor the horse, &c. in the hostrie, nor the materials in the Weauers shop for making of cloth, nor cloth or garments in a Taylors shop, nor sacks of corne or meale in a Mill, nor in a Market, nor any thing distrained for damage fesant, for it is in custody of Law, and the like.

Vid. for this word Distreine, sect. 136.
(h) 14. H. 8. 25. 2. E. 2. tit. Distress. 6. R. 2. Reicous 11. 7. E. 3. Auowr. 199. 15. E. 2. Auowr. 2.

(i) 22. E. 4. 49. b. 7. H. 7. 1. b. 22. E. 4. 36. 4. E. 6. tit. Dist. Br. 74.

(k) Fourthly, nothing shall be distreined for rent, that cannot be rendred againe in as good plight as it was at the time of the distresse taken, as sheaues or shockes of corne or the like cannot be distreined for rent, but for damage fesant they may be distreined. But charrets or carts with corne may be distreined for rent, for they may be safely restored.

(k) 18. E. 3. 4. 2. 11. H. 7. 14. 2. 21. H. 7. 39. b. 22. E. 4. 50. b. 1. H. 4. 15.
(d) Okeham 38. 39. Bra. li. 4. f. 217. F. N. B. 90. 2. Reg. 97. Flet. li. 1. c. 41. Mag. Cap. 2. sect. 15. 16. 4. E. 3. 1. 29. E. 3. 17.

(l) Fifthly, beasts belonging to the plow, aueria carucæ shall not be distreined (which is the ancient Comon Law of England, for no man shal be distreined by the vtensils or instruments of his trade or profession, as the axe of the Carpenter, or the bookes of a Scholler) while goods or

(m) 21.H.7.26. 3.E.3. Ass.46.9.
(n) 7.H.7.1.b.10.H 7.21. 21.H.7.4.a. 15.H.7.17. 18.E.2. auowrie 219. 6.E.4.22.E.4.49. 4.E.3.distress.18.27.E.3. 30. 2.H.4.16.
(o) Marlebr. cap. 4. W.1.cap.16. 2.& 3.Ph. & Mar.ca.13. Fleta lib.2.cap.20. 6.H.3. auowrie 242. 30.Ass.38. 1.H.6.9. 22.E.4.11. F.N.B.89. Doctor & Student,lib.2. cap.27. 5.H.7.fol.9.
(p) 33.H.8. tit.distres. Br.65.
(q) 4.E.6.tit.distres.74. F.N.B.100.E.

(r) 3.E.3.tit.trans.11.

(s) 34.H.6.18.

(t) Regist.F.N.B.100. 101.

(u) 7.H.6.13.lib.4.fol.49. Lib.3.fol.16. 34.E.1. tit. auowrie 232.32.H.8.Br. release 11.F.N.B. 82.83. Glanuil.lib.9.cap.35. Fleta lib.2.cap.40. & lib. 3.cap.14. Bracton lib.2.fol.36. W.1.cap.35.25.E.3.cap. 11.Britton fol.57.& 70.

(x) 45.E.3.7. 20.E.4.10. 34.H.6.48. 35.H.6.34. 9.H.6.55. 11.H.4.22.
(y) 2.E.2. Estop.253. 39.E.3.13. Pl.Com.434. 18.E.3.16. 15.E.3. Estop.236. 14.H.4.32.

(z) 14.H.6.23. 8.H.4.7.
(a) Resolue Pasch.2.Eliz. in Communi Banco.
(b) Mich.31. & 32. Eliz. in Communi Banco adiudge in Londons case.
(c) 38.H.6.24.30.E.3. 21.

oz other beasts, which Bracton calls animalia (oz catalla) otiosa, may be distrained (m). 6. Furnaces, Candzons oz the like fixed to the freehold, oz the dozes oz windowes of a house, oz the like cannot be distrained. (n) Lastly, beasts that escape may bee distrained foz rent, though they haue not beene leuant and couchant. (o) Note that he that distraines any thing that hath life, must impound them in a lawfull pound within three miles in the same Countie, and that is either Quert oz Open, in a Pinfold made foz such purposes, oz in his owne Close, oz in the Close of another by his consent. And it is therefoze called Open, because the owner may giue his Cattle meat and drinke without trespasse to any other, and then the Cattle must bee sustained at the perill of the owner. (p) Oz it is a Pownd Couert oz Close, as to impownd the Cattle in some part of his house, and then the Cattle are to be sustained with meat and drinke at the perill of him that distraineth, and hee shall not haue any satisfaction therefoze. But if the distresse be of Vtensils of housh old, oz such like dead goods which may take harme by wet oz weather, oz be stolne away, there he must impownd them in a house oz other Pownd couert within three miles within the same Countie, foz if he impownd them in a Pownd ouert he must answer foz them.

(q) If the distresse be taken of goods without cause, the owner may make Rescous, but if they be distrained without cause, and impownded, the owner cannot breake the Pownd and take them out, because they are then in the custody of the Law.

(r) But if a man distraine Cattle foz damage feasant, and put them in the Pownd, and the owner that had common there make fresh suit, & finde the doze vnlocked, hee may iustifie the taking away of the Cattle in a Parco fracto. (s) If the Owner breake the Pownd, and take away his goods, the partie distraining may haue his Action de parco fracto, and hee may also take his goods that were distrained wheresoeuer he finde them, and impownd them againe.

It is called a Writ de parco fracto of these wozds in the Writ (t) Parcum illum vi & armis fregit. And the fozme thereof appeares in the Register and F. N. B.

But it is to be obserued that foz the rent due the last day of the Terme, the Lesloz cannot distraine because the Terme is ended, and therefoze some vse to reserue the last halfe yeares rent, at the Feast of the Natiuitie of Saint Iohn Baptist befoze the end of the Terme, so as if the rent be not then paid, he may distraine betweene that and Michaelmasse following.

¶. *Action de debt.* Note a diuersitie betweene a rent reserued vpon a lease foz yeares, reseruing a yearely rent: the Lesloz may haue seuerall Actions of debt foz euerie yeares rent. But vpon a bond oz contract foz payment of seuerall summes, no Action of debt lieth till the last day be past. But otherwise it is of a Recognizance, which see at large and the reason thereof cap. Releases, Sect. 512. 513. (u) Note that the Lozd shall not haue an action of debt foz release oz foz escuage due vnto him, because hee hath other remedie, but his Executozs oz Administratozs shall haue an action therefoze, because it is now become as a flower falne from the stocke, and they haue no other remedy. Neither shall the Lozd haue an action of debt foz aid, pur file marier, oz faire fitz Chiualer, foz the cause afozesaid.

¶ *Mes entiel case il couient que le Lessor soit seisie de mesmes les tenements al temps del lease, car est bone plea pur le Lessee a dire que le Lessor nauoit riens en les tenements al temps del lease.* And the reason of this is, foz that in euerie contract there must be quid pro quo, foz contractus est quasi actus contra actum, and therefoze if the Lesloz hath nothing in the land, the Lessee hath not quid pro quo, noz any thing foz which he should pay any rent. And in that case he may also plead, that the Lesloz non dimisit, and giue in euidence the other matter.

¶ *Si* (x) *non que le lease soit per fait indent, &c.* If the lease be made by Deed indented, then are both parties concluded, (y) but if it be by Deed poll the Lessee is not estopped to say that the Lesloz had nothing at the time of the lease made. A. Lessee foz the life of B. makes a lease foz yeares by Deed indented, and after purchase the reuersion in fee. B. dieth, A. shall auoid his owne lease, foz he may confesse & auoid the lease which toke effect in point of interest, and determined by the death of B. But if A. had nothing in the land, and made a lease foz yeares by Deed indented, and after purchase the land, the Lesloz is aswell concluded, as the Lessee to say that the Lesloz had nothing in the land, and here it wozketh only vpon the conclusion, and the Lesloz cannot confesse and auoid as he might in the other case. (z) If a man take a lease of his owne land by Deed indented reseruing a Rent, the Lessee is concluded. (a) But if a man take a lease of the herbage of his owne land by Deed indented, this is no conclusion to say that the Lesloz had nothing in the land, because it was not made of the land it selfe: (b) but if a man take a lease foz yeares of his owne land by Deed indented, the Estoppell doth not continue after the terme ended. Foz by the making of the lease, the Estoppell doth grow, and consequently by the end of the lease, the Estoppell determines, (c) and that

part

part of the Indenture which belonged to the Lessee, doth after the terme ended, belong to the Lessor, which should not be if the Estoppell continued.

Sect. 59.

CEt est assauoir, Que en lease pur terme de ans per fait ou sans fait, il ne besoygne ascun liuerie de Seisin destre fait al Lessee, mes il poit entrer quant il voet p force de mesme le Lease. Mes des Feoffments faits en pais, ou dones en le Taile, ou lease pur terme de vie, en tiels cases ou Franktenement passera, si ceo soit per fait ou sauns fait, il couient auer vn liuerie de seisin.

AND it is to bee vnderstood, That in a lease for yeares by deed or without deed, there needs no Liuerie of Seisin to be made to the Lessee, but he may enter when hee will by force of the same lease. But of Feoffments made in the Countrey, or gifts in Taile, or Lease for terme of life, in such cases where a Freehold shall passe, if it be by Deed, or without Deed, it behoueth to haue Liuerie of Seisin.

Liuerie de Seisin. Traditio, or deliberatio seisinæ is a solemnitie that the Law requireth for the passing of a Freehold of Lands or Tenements by deliuerie of Seisin thereof. 18.H.3.fo.16. 41.E.3.17. 40.Ass.10. 2.Ass.1. 2.E.3.4.43.E.3.Feoff.51. Pl.Com.25.a. & 303.b. Vide sect.66.

(b) Interuenire debet solennitas in mutatione liberi tenementi ne contingat donationem deficere pro defectu probationis. (b) Bract.li.2.ca.15.

And there be two kindes of liuerie of seisin, viz. a liuerie in (c) Deed, and a liuerie in Law. A liuerie in Deed is when the Feoffor taketh the ring of the doore, or turfe or twig of the Land, and deliuereth the same vpon the Land to the Feoffee in name of Seisin of the Land, &c. per hostium & per haspam & annulum vel per fustem vel baculum, &c. (c) Bract.li.2.ca.15.& 18. Brit.ca.33.in fine, fo. 87. Fleta lib.3.cap.15.

A. seised of an house in fee, and being in the house, (d) saith to B. I demise to you this house for terme of my life, this is a good beginning to limit the state, but here wanteth liuerie. (d) Lib.6.fol.26.Sharps case.

A liuerie in deed may be done two manner of wayes by a solemne act and words, as by deliuerie of the ring or haspe of the doore, or by a branch or twig of a tree, or by a turfe of the land, and with (e) these or the like words, the Feoffor and Feoffee both holding the deed of feoffment, and the ring of the doore, haspe, branch, twig, or turfe: and the feoffor saying, Here I deliuer you seisin and possession of this house, in the name of all the Lands and Tenements contained in this Deed, according to the forme and effect of this Deed. Or by words without any Ceremony or Act, as the Feoffor being at the house doore or within the house, Here I deliuer you seisin and possession of this house, in the name of seisin and possession of all the lands and tenements contained in this Deed, Et sic de similibus, or, enter you into this house or land, and haue and enioy it according to the Deed; or, Enter into the house or land, and God giue you ioy. or, I am content you shall enioy this land according to the Deed or the like. For if words may amount to a liuerie within the view, much more it shall vpon the land. But if a man deliuer the Deed of feoffment vpon the land, this amounts to no liuerie of the land, for it hath another operation to take effect as a Deed: but if he deliuer the Deed vpon the Land in name of seisin of all the lands contained in the Deed, this is a good liuerie: and so are other bookes intended that treat hereof, that the Deed was deliuered in name of seisin of that land. Hereby it appeareth, that the deliuerie of any thing vpon the land in name of seisin of that land, though it be nothing concerning the land, as a ring of gold, is good, and so hath it beene resolued by all the Iudges, and so of the like. (e) See of this more, sect.60. 41.E.3.17.b.21. Ass p.10. 38.Ass p.2. 38.E.3.11. 39.Ass.p.12. 26 Ass.39. 27.Ass.p.61. 18.E.3.16. Lib.6.fo.26. Sharps case. 37.9.fol.137 Thoroughgoods case. 43.E.3.tit.Fesh.51. 35.H.8.Feoffm.Br. 50.E.3.Rot.Parl.nu.30.

If diuers parcels of land be contained in a Deed, and the Feoffor deliuers Seisin of one parcell according to the Deed, all the parcels doe passe, albeit he saith not (in name of all, &c.) because the Deed contained all. And so if there be diuers Feoffees, and he make liuerie to one according to the Deed, the land passeth to all the Feoffees, and yet the plainer way is to say (in the name of the whole, or of all the Feoffees.) 13.E.3.Estop.177.

If a man make a Charter in fee, & deliuer seisin for life secundum formam cartæ, the whole Fee simple shall passe, for it shall be taken most strongly against the Feoffor. Note that these words (Secundum formam cartæ) are vnderstood according to the quantitie and qualitie of the effectuall estate contained in the Deed. If a man make a lease for yeares by Deed, and deliuer Ibidem. 7.E.4.25.29.Ass.40. 10.Ass.19.43.Ass.20.

liuer seisin according to the forme and effect of the Deed; yet her hath but an estate for yeares, and the liuerie is void as Littleton saith. So if A. by Deed giue land to B. to haue and to hold after the death of A. to B. and his heires, this is a void Deed, because he cannot reserue to himselfe a particular estate, and construction must be made vpon the whole Deed, and if liuery be made according to the forme and effect of the Deed, the liuerie also is void, because the liuery referreth to a Deed that hath no effect in Law, and therefore it cannot worke secundum formam & effectum cartæ. And so it was adiudged, & sic de similibus. * And it is to be obserued that neither the Feoffor being absent can make liuerie, nor the Feoffee being absent can take liuerie, but by warrant of Attorney, by Deed, and not by Parol, because it concerneth matter of Freehold.

Mich.13. & 34. Eliz. in the Kings Bench inter Hogge & Crosse for lands in London.
Vid. Pl. Com. 395.
*See more of this, sect.66.
11.H.4.71. 19.Ass.9.
19.H.8.9.b.

Vide Sect. 1. in Bridgewaters Case, where a man hath a moueable estate of inheritance, for example there put, in 13. acres: the question is where liuerie shall be made. First, if they be parcell of a Mannor, they may passe by the name of the Mannor, but if they be in grosse then the Charter of feoffment must be of 13. acres, lying and being in the meadow of 80. acres, generally without bounding or describing of the same in certaintie, and liuerie of the seisin of any 13. acres allotted to the Feoffee for a yeare secundum formam cartæ is a good liuerie to passe the content of 13. acres whersoeuer the same lye in that Meadow. In the second case where one entire Mannor is separate and diuided, as is aforesaid, there is no question but the liuerie must be made of that Mannor, but in the other case where two Mannors are separate, and diuided alternis vicibus, there the Charter of feoffment must be made of both, and liuerie in that Mannor which hee is seised of in any one yeare secundum formam cartæ, and the next yeare in the other secundum formam cartæ: for there are two distinct Mannors, and seuerall estates in them.

Bridgewaters case. v:4:a3.

Vide sect. 1.

A liuerie in Law is when the Feoffor saith to the Feoffee being in the view of the house or land, (I giue you yonder land to you and your heires, and goe enter into the same, and take possession thereof accordingly,) and the Feoffee doth accordingly in the life of the Feoffor enter, this is a good feoffment, for Signatio pro traditione habetur. And herewith agreeth Bracton, Item dici poterit, & assignari quando res vendita vel donata sit in conspectu, quam venditor & donator dicit se tradere: And in another place he saith, In seisina per effectum & per aspectum. But if either Feoffor or the Feoffee die before entrie, the liuerie is void. And liuerie within the view is good where there is no Deed of feoffment. (a) And such a liuerie is good albeit the land lye in another countrey. (b) A man may haue an inheritance in an vpper chamber, though the lower buildings and soile be in another, and seeing it is an Inheritance corporeall it shall passe by liuerie. (c) A man maketh a Charter of feoffment and deliuers seisin within the view, the Feoffee dares not enter for feare of death, but claimes the same, this shall vest the freehold and inheritance in him; albeit by the liuerie no estate passed to him, neither in Deed, nor in Law, so as such a claime shall serue, aswell to vest a new estate and right in the Feoffee, as in the common case to reuest an ancient estate and right in the Disseisee, &c. as shall be said hereafter more at large in the chapter of Continuall Claime. And so note a liuerie in Law shall be perfected and executed by an entrie in Law. (d) If a man be disseised, and make a Deed of feoffment, and a letter of Attorney to enter and take possession, and after to make liuerie secundum formam cartæ, this is a good feoffment albeit hee was out of possession at the time of the Charter made, for the authoritie giuen by the letter of Attorney is executorie, and nothing passed by the deliuerie of the Deed till liuerie of seisin was made. And in ancient letters of Attorney power is giuen to others to take possession for the Feoffor. But if a man be disseised, and make a writing of a lease for yeares and deliuer the Deed, and after deliuer it vpon the ground, the second deliuerie is void, for the first deliuerie made it a Deed, and for that the lease for yeares must take effect by the deliuerie of the Deed, therfore the Deed deliuered when he was out of possession was void. But so it is not of a Charter of feoffment, for that takes effect by the liuerie and seisin. But if the Lessor had deliuered it as an Escrow, to be deliuered as his Deed vpon the ground, this had beene good.

38.E.3.11. 38.Ass.p.2.
43.Ass.p.20. Temps H.8. tit. Feoffments Br.70.
18.E.3.16.b.
28.H.8.F.18. 9.E.4.39. per Moyle.
Bract. lib.2.cap.18. & lib.4.fol.225.a.
(a) 9.E.4.39. 38.E.3.11.
(b) 9.E.4.28. 40.5.H.7.9. 3.H.6. tit. Pleint. 1. 21.H.4.32. 11.E.3. Ass.86.
(c) 38.Ass.p.23. v:49:b3.

(d) Hill. 37. Eliz. Rot. 620. in Com. Banco, inter Browne & Terrey adiudged.
Dyer 16. Eliz. 234.
3. Eliz. Dyer 131.

A man makes a lease for yeares & after makes a Deed of feoffment and deliuers seisin, the Lessee being in possession and not assenting to the feoffment, this liuerie is void, for albeit the Feoffor hath the freehold and inheritance in him, yet that is not sufficient, for a liuerie must be giuen of the possession also: but if the Lessee be absent, and hath neither wife nor seruants (though he hath cattell) vpon the ground the liuerie of seisin shall be good.

Lib.3.fol.35. inter Iennings & Bragge.

Lib.2.fol.31.32. Bamfworths case.

If a man be seised of an house, & of diuers seuerall closes in one Countie in fee, and makes a lease thereof for yeares, and afterward maketh a feoffment in fee of the same, and makes liuerie of seisin in the closes, (the Lessee or his wife or seruants then being in the house) the liuerie is void for the whole: for the Lessee cannot be vpon euerie parcell of the land to him demised, for the preseruation and continuance of his possession therein. And therefore his being in the house, or vpon any part of the land to him demised, is sufficient to preserue and continue his possession in the whole, from being ousted or dispossessed.

Non

Note a great diuerſity, when a man hath two wayes to paſſe lands, and both of the wayes be by the Common Law, and he entendeth to paſſe them by one of the wayes, yet vt res magis valeat it ſhall paſſe by the other. But where a man may paſſe Lands either by the Common Law, or by raiſing of an vſe, and ſetling it by the ſtatute, there in many caſes it is otherwiſe. For example, If a man be ſeiſed of two acres in fee, and letteth one of them for yeeres, and intending to paſſe them both by feoffement, maketh a Charter of feoffement, and maketh liuery in the acre in poſſeſſion, in name of both, only the acre in poſſeſſion paſſeth by the liuery. Yet if the leſſee attorne, the reuerſion of that acre ſhall paſſe by the deed and attornement, for hee is in by the Common Law, and in the per in both, and ſo in the like. But otherwiſe it is, if the father make a Charter of feoffement to his ſonne, and a letter of Attorney to make liuery, and no liuery is made, yet no vſe ſhall riſe to the ſonne, becauſe he ſhould be in by the ſtatute in another degree, viz in the poſt, and the intention of the parties worke much both in the raiſing and direction of vſes. So if Ceſty que vſe and his feoffes had ſigned in a feoffement after the ſtatute of 1. R. 3. &c. it had beene the feoffement of the feoffes, and the confirmation of Ceſty que vſe, for the ſtate at the Common Law ſhall be preferred. So to conclude this point, Of Freehold and Inheritances, ſome be corporeall, as houſes, &c. lands, &c. theſe are to paſſe by liuery of ſeiſin, by Deed or without Deed; ſome be incorporeall, as Aduowſons, Rents, Commons, Eſtouers, &c. theſe cannot paſſe without Deed, but without any liuery. And the Law hath prouided the Deed in place or ſtead of a liuery. And ſo it is if a man make a leaſe, and by Deed grant the reuerſion in fee, here the freehold with attornement of the leſſee by the Deed doth paſſe, which is in lieu of the liuery. See Bract. lib. 2. cap. 18. Et eſt traditio de re corporali de perſona in perſonam de manu, &c. gratuita tranſlatio, & nihil aliud eſt traditio in vno ſenſu, niſi in poſſeſſionem inductio, de re corporali; & ideo dicitur, Quod res incorporales non patiuntur traditionem ſicut ipſum ius quod rei ſiue corpori inhæret, & quia non poſſunt, res incorporales poſſideri ſed quaſi, ideo traditionem non patiuntur, &c.

7.E.4.20.2. pertouts les Iuſt. 11.H.4.71. Pl.Com. 152.10.L.4.3.

This ancient manner of conueyance by feoffement and liuery of ſeiſin, doth for many reſpects exceed all other conueyances. For (as hath beene ſaid) if the feoffor be out of poſſeſſion, neither fine, recouery, indenture of bargaine and ſale inrolled, nor other conueyance, doth auoid an eſtate by wrong, and reduce clearely the eſtate of the feoffee, and make a perfect Tenant of the Freehold, but only liuery of ſeiſin vpon the land: the other conueyances being made off from the ground, doe ſometimes more hurt than good, when the feoffor is out of poſſeſſion. And yet in ſome caſes a freehold ſhall paſſe by the Common Law without liuery of ſeiſin: As if a houſe or land belong to an office by the grant of the office by Deed, the houſe or land paſſeth as belonging thereunto. So if a houſe or chamber belong to a Corodie, by the grant of a Corodie, the houſe or chamber paſſeth. A freehold may by cuſtome bee ſurrendred without liuery, as hereafter ſhall be ſaid: and ſo of aſſignement of Dower ad oſtium Eccleſiæ, or otherwiſe, and by exchange a freehold may paſſe without liuery, as hereafter ſhall be ſaid in this Chapter.

Lib. 2. fol. 55. Bucklers caſe.

1.H.7.28. 8.H.7.4.

31.H.6.16. 8.H.7.4. M.31.E.1. coram Rege. Ranulph. Huntingfels caſe. 3.E.3. Coron. 310. 11.H.4.83. V. Sect. 74.

Section 60.

¶ MEs ſi home leſſa terres ou Tenements per fait, ou ſans fait, a terme des ans, le remainder ouſter a vn auter pur terme de vie, ou en taile, ou en fee donque en tiel caſe il conuent que le leſſor fait vn liuery de ſeiſin a le leſſee p terme de ans, ou autrement riens paſſa a eux en le remaind̄ com̄t q̄ le leſſee ent̄ en

BVt if a man letteth lands or tenemẽts by deed or without deed for terme of yeeres, the remainder ouer to another for life, or in taile, or in fee; in this caſe it behoueth, that the leſſor maketh liuery of ſeiſin to the leſſee for yeeres, otherwiſe nothing paſſeth to them in the remainder, although that the leſſee enter into the

¶ *Per fait, ou ſauns fait.* For ſeeing that the remainders take effect by liuerie, there needs no deed.

22.H.6.1. 10.E.4.1. 18.E.4.13.

¶ *Le remainder* is a reſidue of an eſtate in land depending vpon a particular eſtate, and created together with the ſame, and in Law-Latin it is called Remanere.

¶ *Fait vn liuery de ſeiſin al leſſee.* This liuery is not neceſſary in this caſe for the Leſſee himſelfe, becauſe hee hath but a terme for yeeres, but it is for the benefit of them in the rem', ſo as the liuery to the leſſee ſhall inſure for the benefit of them in the rem'; for the liuerie

uery of the poſſeſſion could not be made to the next in remainder, becauſe the poſſeſſion belonged to the leſſee for yeeres, and for that the particular terme, and all the remainders make in Law but one eſtate, and take effect at one time, therefore the liuery is to bee made to the Leſſee. But if a leaſe for yeeres without deed bee made to A. and B. the remainder to C. in fee, & liuerie is made to A. in the abſence of B. in the name of both; it ſeemeth the liuerie is good to veſt the remainder, and there is a diuerſity, betweene two ioynt Attornies to receiue liuery for another, and liuery and ſeiſin is made to one of them, in the name of both, this is clearely void, be-

les tenements. Et ſi le termor en tiel cas entra deuant aſcun liuerie de ſeiſin fait a luy, donque eſt le franktenemẽt & auxy le reuerſion en le leſſor: Mes ſi il fait liuerie de ſeiſin a le leſſee, donque eſt le franktenement oue le fee a eux en le remainder, ſolonque le forme del grant & le volunt del leſſor.

tenements. And if the Termour in this caſe entreth before any liuery of ſeiſin made to him, then is the Freehold and alſo the reuerſion in the Leſſor. But if he maketh liuerie of ſeiſin to the Leſſee, then is the Freehold together with the fee to them in the remainder according to the forme of the grant, and the will of the leſſor.

10 E.4.1. 12 E.4.16. 15.E.4.18. 22.E.4.35. 40.E.3.10.41. Temps H.8. Feffments 72. 6.H.4.2.b. Litt. 153. 3.H7.13.

cauſe they had but a meere and bare authority, and they both doe in Law make but one Attorney, vnleſſe the warrant be ioyntly and ſeuerally, but the leſſee for yeeres hath an intereſt in the land. Againe, if A. is to make a feoffment to B. and C. and their heires without deed, and A. makes liuery to B. in the abſence of C. in the name of both, and to their heires; this liuerie is void to C. becauſe a man being abſent cannot take a freehold by a liuery, but by his Attorney being lawfully authoriſed to receiue liuery by deed, vnleſſe the feoffment bee made by deed, and then the liuery to one in the name of both is good.

v.48.a2.

More there is a diuerſity betweene liuerie of ſeiſin of land, and the deliuery of a deed, for if a man deliuer a deed without ſaying of any thing, it is a good deliuery, but to a liuery of ſeiſin of land, words are neceſſary; as taking in his hand the Deed, and the Ring of the doore (if it be of an houſe) or a turfe or twig (if it be of land) and the feoffee laying his hand on it, the feoffor ſay to the feoffee, Here I deliuer to you ſeiſin of this houſe, or of this land, in the name of all the land, contained in this Deed, according to the forme and effect of the Deed, (as hath beene ſaid) and if it be without Deed, then the words may bee, Here I deliuer you ſeiſin of this houſe or land, &c. to haue and to hold to you for life, or to you and the heires of your body, or to you and your heires for euer as the caſe ſhall require.

Ruth. cap.4. verſe 7.8. Deut.25.9.10.

When the kinſman of Elimelech gaue vnto Boas the parcell of land that was Elimelechs, he tooke off his ſhoe, and gaue it vnto Boas in the name of ſeiſin of the land (after the manner in Iſrael) in the preſence, and with the teſtimony of many witneſſes.

Gen.23.verſ.11.

And when Ephron infeoffed Abraham of the field of Machepela, he ſaid to him, Agrum trado tibi, &c. I deliuer this field to thee.

A man makes a leaſe for yeeres to A. the remainder to B. in fee, and makes liuery to A. within the view: this liuery is void, for no man can take by force of a liuery within the view, but he that taketh the freehold himſelfe.

¶ *Et ſi le termor en tiel caſe enter deuant aſcun liuery fait, &c.* By the entry of the leſſee he is in actuall poſſeſſion, and then the liuery cannot be made to him that is in poſſeſſion, for Quod ſemel meum eſt, amplius meum eſſe non poteſt. But if the leſſor and leſſee come vpon the ground, of purpoſe for the leſſor to make, and for the leſſee to take liuery, there his entry veſts no actuall poſſeſſion in him vntill liuery be made, for (a) Affectio tua nomen imponit operi tuo. And therefore if it be agreed betweene the diſſeiſor and diſſeiſee, that the diſſeiſee ſhall releaſe all his right to the diſſeiſor vpon the land, and accordingly the diſſeiſee entreth into the land, and deliuereth the releaſe to the diſſeiſor vpon the land, this is a good releaſe, and the entry of the diſſeiſee, being for this purpoſe, did not auoid the diſſeiſin, for his intent in this caſe did guide his entry to a ſpeciall purpoſe. And ſo was it reſolued (b) by Sir Iames Dyer, and the whole Court of Common pleas, Paſch. 18. Eliz. vpon euidence which I my ſelfe heard and obſerued. But if the diſſeiſor infeoffe the diſſeiſee and others there albeit the diſſeiſee came to take liuery, yet when liuery is made the diſſeiſee is remitted to the whole in iudgment of Law, as ſhall be ſaid more at large in the Chapter of Remitter in his proper place.

(a) Bracton. lib.1.

(b) P.19.Eliz.in Communi Banco. Pl.Com.in Aſſ. de freſh-force.91. 29.Aſſ.26. 43.Aſſ.p.3. 3.H.6.19. in formdon.

Sect.

Sect. 61.

CEt si home voille faire feoff. p fait ou sans fait, de tres ou tenements que il ad en plusors Villes en vn Countie, le liuerie de seisin fait en vn parcel de les tenements en vn vil- le en le nosme de touts suffist pur touts les au- tres terres & tenements comprehendes deins ñ l'feoffment, en toutz les autres villes deins ñ le conntie. Mes si home fait vn fait de feoff- ment des terres ou tene- ments en diuers Coun- ties, la il couient en ches- cun Countie auer vn li- uerie de seisin.

AND if a man wil make a feoffment by Deed or without Deed, of lands or tenements which hee hath in diuers Townes in one Countie, the liuerie of Seisin made in one parcell of the Tenements in one Towne in the name of all the rest is sufficient for all other the lands and tene- ments comprehended with- in the same feoffment in all other the Townes in the same Countie, but if a man maketh a Deed of Feoff- ment of Lands or Tene- ments in diuers Counties, there it behoueth in euerie Countie to haue a liuerie of Seisin.

CEN *vn Countie,* A Countie is fet- ched from ꝑ French, and Shire from the Saxon. For Styran in the Saxon tongue signifieth partiri, be- cause euerie Coun- tie or Shire is di- uided and parted by certaine meres and bounds from ano- ther, and in Latine is called Comitatus à comitando, for accompanying to- gether. And for as much as the men of one Countie doe not accompany to- gether with men of another Countie at Countie Courts, Turnes, Leets, and other Courts, there- fore in iudgement of Law they shall take no notice of a liuerie in another Countie to passe any lands in their owne Countie. But of this more shall be said hereafter. 45.E.3.21.

Sect. 62.

CEt en ascun cas home auc- ra per le grant dun autre Fée simple, Fée taile, ou Franken. sans liuerie de seisin. Sicome deux homes sont, & chescun deux est seisie dun quantitie de terre deins vn County, & lun granta sa terre a lauter en eschange pur la terre que lauter ad, & en mesme le Manner lauter granta sa ter-

AND in some case a man shall haue by the grant of ano- ther a Fee simple, Fee taile, or Freehold with- out liuerie of seisin. As if there bee two men and each of them is seised of one quantitie of land in one Coun- tie, and the one gran- teth his land to the other in exchange for the land which the other hath, and in like manner the other gran-

CHere Littleton put- teth a case where Freehold, &c. shall passe without liuerie of Sei- sin, and thereupon putteth the case of an exchange of lands in one Countie that is good by deed or without deed, without any liuerie, but if it be in seuerall Counties there must bee a Deed. Also of things that lye in grant, as Aduowsons, Rents, Com- mons, &c. an exchange of them albeit they bee in one Coun- tie, is not good; vnlesse it be by Deed; and therefore Littleton putteth his Case warily of land. And in case of a fine which is a feoffment of Record, of a deuise by a last will, of a surrender, of a release or confirmation to a Lesse 45.E.3.21. 3.E.4.10. 9.E.4.21. 7.H 4.1, 8.H.7.4. Perk. 5.245. 21.H.6.2.

Lessee for yeares, or at will. In all these and some other cases a Freehold, &c. (as hath beene said) may passe without liuerie. But this word (Eschange) which our Author here vseth, is so appropriated by Law, to this case, as it cannot be expressed by any Periphrasis or circumlocution.

re a le primer Grantor en eschange pur la terre que le primer Grantor ad, en ceo cas chescun poit enter en lauter terre issint mise en eschange sans ascun liuerie de seisin, & tiel eschange fait per parolr de tenemts deins mesme le Countie sans escript, est Assets bone.

teth his land to the first Grantor in exchange for the land which the first Grantor hath. In this case each may enter into the others land, so put in exchange without any liuerie of Seisin. And such exchange made by paroll of tenements within the same Countie without writing, is good enough.

Vide Sect. 1.

Perk. 252. 253.

¶ En ceo case chescun poet enter, &c. For by the exchange, the parties, albeit the lands be all in one Countie, haue no Freehold in Deed or Law in them before they execute the same by entrie, and therefore if one of them dieth, before the exchange be executed by entrie, the exchange is void; for the heire cannot enter and take it as a Purchasor, because hee was named onely to take by way of limitation of estate in course of discent.

Perk. 9.E.4.38.39.45.E.3. 20.21.45.E.3. Exchange 10.

Sect. 63.

¶ THis is euident enough. But of what things an exchange may bee made (which was a conueyance frequent in former times) is to be seene, and herein many things are to be obserued.

¶ Et si les terres ou tenements, soient en diuers counties, cest ascauoire ceo que lun ad est vn Countie & ceo que lauter ad est en auter Countie la il couient de auer vn fait indent destre fait enter eux de tiel eschange.

AND if the lands or tenements bee in diuers Counties, *viz.* that which the one hath in one Countie, and that which the other hath in another Countie, there it behoueth to haue a deed indented, made betweene them of this exchange.

First, That the things exchanged (a) need not to be in esse at the time of the exchange made. (As if I grant a rent newly created out of my lands in exchange, for the manner of Dale, this is a good exchange.

(a) 30.E.1.Esch.15. 3.E.4.10. 9.E.4.21. 14.H.8.20.

(b) Secondly, There needeth no transmutation of possession, and therefore a release of a Rent, or Estouers, or right to land in exchange for land is good.

(b) 6.E.56. 30.E.1.Es.16. 16.E.3.Esch.2. 7.H.4.34. 3.E.4.11.

(c) The things (c) exchanged need not be of one nature, so they concerne lands or tenements, whereof Littleton here speaketh. As land for rent or common, or any other inheritance which concerne lands or tenements, or spirituall things, as Tythes, &c. for temporall, and tenure by a diuine Seruice for a temporall Seigniorie, &c. But Annuities or such like which charge the person onely, and doe not concerne lands or tenements, cannot be exchanged for lands or tenements.

(c) 9.E.4.21. 9.E.3.56. 21.E.3.6.

Sect. 64, 65.

Estates. Vide Sect. 650.

¶ *NEschange, il couient que les estates soient egales, &c.* Equality in lands is threefold, viz. First, equality in value:

¶ ET nota que en eschange il couient q̄ les estates soint egales, que

AND note that in exchanges it behoueth that the estates which both par-

am-

ambideur tiels parties aueront en les fres iſſint eſchanges, car ſi lun voit & grant que lauter aueroit la terre en Fée taile, pur le terre que il aueroit del grant de le auter en Fée ſimple, coment que lauſ ſoit agrée a cel, ceſt eſchange eſt voide, pur ceo q̄ les eſtates ne ſont my egales.

ties haue in the lands ſo exchanged, bee equall, for if the one willeth and grant that the other ſhall haue his land in fee taile for the land which hee hath of the grant of the other in fee ſimple, although that the other agree to this, yet this exchange is voyd, becauſe the eſtates bee not equall.

Decondly, equalitie in quantitie of eſtate giuen & taken. Thirdly, equalitie in qualitie or manner of the eſtate giuen and taken. But as Littleton after ſaith, Equalitie in value of lands in an exchange is not requiſite; neither equalitie in the qualitie or manner of the eſtate. And therefore if two iointenants giue lands iointly to two men, & their heires, and the other in exchange of other lands to them and their heires in common, this is a good exchange, and yet the manner of their eſtates is not equall, for the eſtate of one partie is ioynt, and the other in common. And ſo it is if two men giue lands in exchange to A. and his heires for lands from A. to them two and their heires, though the one partie haue a ioynt eſtate, and the other a ſole eſtate, yet the exchange is good. The like is if the one land be of a defeaſible title, and the other of an vndefeaſible title, yet the exchange is good till it be auoided.

(a) An exchange with the King is good, and yet the King is ſeiſed in his politike capacitie, & the ſubiect in his naturall capacitie. But equalitie of the quantitie of the eſtate is requiſite, as it appeareth clerely in the caſes put by Littleton (b) But therein it is to be obſerued that it is not neceſſarie that the parties to the exchange bee ſeiſed of an equall eſtate at the time of the exchange made: for if tenant in taile, or a husband, ſeiſed in the right of his wife, exchange lands, and both by the exchange giue a Fee ſimple, this is good but till it be auoided by the iſſue in taile, or by the wife after the death of the husband, (d) ſo as Littleton ſaith that in exchanges it behoueth that the eſtates which both parties haue in ꝑ land ſo exchanged be equal is as much to ſay as that the ſtate reciprocally giuen in exchange ought to be equall. (e) But in a partition the eſtates allotted to either partie need not to bee equall

(a) Bracton lib. 5. fo. 389. 17. E. 3. 12. b. 4. H. 4. 2.

(b) 14. H. 6. 6. E. 2. Exch. 12. 8. E. 2. Cui in vita 28. 10. E. 3. Exch. 13. 16. E. 3. Exch. 2. 3. E. 3. 19. 13. H. 4. 12. 21. H. 6. 25. 13. E. 4. 3.

(d) 44. E. 3. 20. 38. E. 3. 15. 39. E. 3. 1. 9. E. 4. 21. 7. H. 4. 17. 30. E. 1. tit. bre. 884. 30. E. 1. tit. exchange, 15.

(e) F. N. B. 62. m.

Ceo m̄ le maner eſt, lou il eſt grant & agrée enter eux, que lun auera en lun terre Fée taile, & lauter en lauter terre forſq; a terme de vie, ou ſi lun auera en lun terre Fée taile generall, & lauſ en lauſ terre Fée taile eſpecial, &c. Iſſint touts foits il couient que en eſchange les eſtates dambideur parties ſoient egales ceſt aſcouoire, ſi lun ad Fée ſimple en lun terre, que lauter auera tiel eſtate en lauter terre, & ſi lun ad Fée taile en lun terre il couient que lauter aūa ſemblable eſtate en lauter terre, &c. & ſic de aliis ſtatibus, mes neſt my riens a charger del egal value des terres, car

In the ſame manner it is, where it is granted & agreed betweene them, that the one ſhall haue in the one land Fee taile, and the other in the other land but for terme of life, or if the one ſhall haue in the one land Fee taile generall, and the other in the other land Fee taile eſpecial, &c. ſo alwaies it behoueth that in exchange the eſtates of both parties bee equall, *viz.* if the one hath a Fee ſimple in the one land that the other ſhall haue like eſtate in the other land, and if the one hath Fee taile in the one land the other ought to haue the like eſtate in the other land &c. and ſo of other eſtates, but it is nothing to charge of the equall

quall, as shall be obserued in his proper place.

To shut vp this point, There be fiue things necessarie to the perfection of an exchange. 1. That the estates giuen be equall. 2. That this word (excambium exchange) be vsed (f) which is so individually requisite, as it cannot bee supplied by any other word or described by any circumlocution: and herewith agreeth Littleton afterwards in this Chapter Sect. In the Booke of Domesday I finde, Hanc terram cambiauit Hugo Briccuino quod modo tenet comes Meriton, & ipsum scambium valet duplum.

Hugo de Belcamp pro escambio de warres.

3. That there be an execution by entrie or claime in the life of the parties, as hath beene said. (g) 4. That if it bee of things that lye in grant, it must bee by Deed. (h) 5. If the lands be in seuerall Counties there ought to be a Deed indented, or if the thing lye in grant albeit they be in one Countie.

(i) If an infant exchange lands, and after his full age occupie the lands taken in exchange, the exchange is become perfect, for the exchange at the first was not void (because it amounted to a liuerie, and also in respect of the recompence) but voidable.

¶ *Coment que lauer agree a cel ceſt eſchange eſt voide.* The agreement of the parties cannot make that good which the Law maketh void.

coment que la terre lun vault mult pluis que la terre de lauter ceo nest riens a purpose: issint que les estates per leschange fait, soient egales. Et issint en leschange sont deux grants car chescun partie grant son tre a lauter en eschange, &c. & en chescun de lour grants mention serra fait de leschange.

value of the lands, for albeit that the land of the one bee of a farre greater value than the land of the other, this is nothing to the purpose, so as the estates made by the exchange be equall. And so in an exchange there be two grants, for each partie granteth his land to the other in exchange, &c. & in each of their grants mention shal be made of the exchange.

(f) 9.E.4.21. 25.H.6.56. 19.H.6.27. 44.E.3.24. 50.Ass. Dorset. Wadon. Bedf. Sandeia.

(b) 9.E.4.39. 15.E.4.3. 45.E.3.30.

45.E.3. eschange 1.

(g) 28.H.6.2.

(h) 45.E.3.20. 7.H.4.11.

(i) 4.E.2. tit. exch. 10. 12.H.4.12.

Sect. 66.

¶ *Si home lessa terre a vn auter pur terme dans, coment que le lessor morust deuant, &c.* The reason is because the interest of the tearme (as hath been said) doth passe and rest in the Lessee before entrie, and therefore the death of the Lessor cannot deuest that which was vested before.

¶ *Attorney.* Is an ancient English word, and signifieth one that is set in the turne, stead, or place of another, and of these some bee priuate (whereof our Author here speaketh) & some be publike, as Attorneyes at Law, whose warrant from his master is ponit loco suo talem Attornatum suum, which setteth in his turne or place such a man to be his Attorney.

¶ Item si home lessa terre a vn auter pur term dans, coment que le Lessor morust deuant que le Lessée enter en les tenements, uncore il poit enter en mesmes les tenements apres le mort le Lessor, pur ceo que le Lessée per force de le lease ad droit maintenant dauer les tenements solonqz le forme de le lease. Mes si home fait vn fait de feoffment a vn auter, & vn letter dattorney a vn

ALso if a man letteth land to another for term of yeares, albeit the Lessor dieth before the Lessee entreth into the tenements, yet he may enter into the same tenements after the death of the Lessor, because the Lessee by force of the lease hath right presently to haue the tenements according to the forme of the lease: but if a man maketh a Deed of Feoffment to another, and a Letter of Attorney to home

home a deliuerer a luy seisin per force de mesme le fait, vncore si liuerie de seisin ne soit fait en la vie celuy que fesoit le fait, ceo ne vault riens, pur ceo que lauter nad pas ascun droit dauer les tents solongz le purport de le dit fait, deuant le liuerie de seisin. Et si nul liuerie de seisin soit fait, donqz apres le mort celuy que fist le fait, le droit de tiels tenements est maintenant en son heire, ou en ascun auter.

one to deliuer to him seisin by force of the same deed, yet if liuerie of seisin be not executed in the life of him which made the deed, this auaileth nothing, for that the other had nought to haue the tenements according to the purport of the said Deed before liuerie of seisin made, & if there be no liuerie of seisin, then after the decease of him who made the Deed, the right of these tenements is forthwith in his heire, or in some other.

¶ *Et vn letter dattorney a vn home a deliuer a luy seisin per force de mesme le fait.* Here first it appeareth that the authoritie to deliuer seisin (as hath beene said) must be by Deed: For Letter dattorney is as much as a warrant of Attorney by Deed, for Litteræ doe signifie sometime a Deed, as Litteræ acquietanciæ doe signifie a deed of Acquittance, and herewith (a) agreeth Britton. Vid. Sect. 196.

(a) 24.E.3.27.11.H.7.13. Brit. 101.b.

2. Littleton here speakes generally a vn home, and few persons are (b) disabled to be priuate Attorneyes to deliuer seisin; for Monkes, infants, feme coverts, persons attainted, outlawed, excommunicated, villeines, aliens, &c. may bee Attorneyes. A feme may bee an Attorney to deliuer seisin to her husband, and the husband to the wife, and hee in the remainder to the Lessee for life.

(b) 21.E.4.18.Br. feoffments 50. 21.H.6.30. 13.E.3. Attorney 73.

Perk.

3. It appeareth here that the Attorney must (c) pursue his warrant, otherwise he doth not deliuer seisin by force of the Deed, as Littleton speaketh. Now his authoritie is twofold, expressed in his warrant, and implyed in Law, both which he must pursue, and first of his expresse authoritie. A man seised of blacke acre and white acre makes a Deed of feoffment of both, and a Letter of Attorney to enter into both acres, and to deliuer seisin of both of them according to the forme and effect of the Deed, and he enters into blacke acre and deliuers seisin secundum formam cartæ, this liuerie and seisin is good, albeit he did not enter into both, nor into one in the name of both; for when he deliuereth seisin of one secundum formam cartæ, this is tantamount and implyeth a liuerie of both. So when the feoffment is made to two or more, and the Attorney is to make liuerie of seisin to both, and the Attorney make liuerie of seisin to one of the Feoffees secundum formam & effectum cartæ, this is good to both, and yet in that case he that is absent may waiue the liuerie. If Lessee for life make a Deed of feoffment and a Letter of Attorney to the Lessor to make liuerie, and the Lessor maketh liuerie accordingly, notwithstanding he shall enter for the forfeiture, but if Lessee for yeares make a feoffment in fee and a Letter of Attorney to the Lessor to make liuerie, and he make liuerie accordingly, this liuerie shall binde the Lessor, and shall not be auoided by him: for the Lessor cannot make liuerie as Attorney to the Lessee, because he had no Freehold, whereof to make liuerie, but the Freehold was in the Lessor. If the Lessor make a Deed of feoffment, and a Letter of Attorney to the Lessee for yeares to make liuerie, and he doth it accordingly, this shall not drowne or extinguish his tearme, because he did it as a minister to another and in anothers right, and is accounted in iudgement of Law the act of the other and the Feoffee claimeth nothing by him.

(c) 12.Ass.pl.24. 26.Ass. 39. 11.H.4.3. 10.H.7. 11.H.7.13. 40.Ass.38. 27.Ass.61. 41.Ass.10. 41.E.3.17. vide infra.

If one as Procurator or Attorney to another present to his owne Benefice, he puts himselfe out of possession, because he commeth in by the induction & institution of the Ordinarie. If the Tenant deuise that the Lord shall sell the land, and dieth, and the Lord selleth it, the Seigniorie remaines. But if the Lord of a Grantee of a Rent charge had beene also Ce' que vse of the land, & after the Statute of R.3. & before the Statute of 27.H.8. Ce' que vse had made a feoffment in fee of the land, albeit the land passeth from the Feoffees, and his feoffment is warranted by the power giuen to him by the Statute, yet the Seigniorie or rent charge is extinct by his feoffment, for that he hath not a bare authoritie as the Attorney hath.

17.E.3.62.

If a man be disseised of blacke acre, and white acre, and a warrant of Attorney is made to enter into both and to make liuerie, there if the Attorney enter into blacke acre only and makes liuerie secundum formam cartæ there the liuerie of seisin is void, because he doth lesse than his warrant vide supra.

Warrant for the estate of the Disseisor in white acre cannot be deuested without an Entrie. But there is a diuersitie betweene an authoritie coupled with an interest, and a bare authoritie. For example, A custome within a mannor time out of mind of man vsed, was to grant certaine lands parcell of the said mannor in fee simple, and neuer any grant was made to any, and the heires of his body, for life or for yeares, and the Lord of the said Mannor did grant to one by Copy for life, the remainder ouer to another, and the heires of his body: And it was (k) adiudged, that the grant and remainder ouer was good; for the Lord hauing authoritie by custome, and an interest withall, might grant any lesser estate: for in this case, the custome that enableth him to the greater, enableth him to the lesser, Omne majus in se continet minus. But he that hath but a bare authoritie, as he that hath a Warrant of Attorney, must pursue his authoritie (as hath beene said) and if he doe lesse, it is voyd.

(k) Hil. 36. El. Rot. 492. Inter Stanton & Barnes, in Ejectione firma, in the Kings Bench.

A man make a lease for life, and after make a charter of feoffment, with a Letter of Attorney to deliuer seisin, the Attorney enters vpon the Lessee, this is sufficient to conuey away the reuersion, for (that it may bee said once for all) liuerie of seisin being to perfect the common assurance of lands, is alwayes expounded fauourably, vt res magis valeat quam pereat. And all this was adiudged and (l) resolued by the Court of Common Pleas, and after affirmed by all the Iudges of the Kings Bench, in a Writ of Error.

2. & 3. Ph. & M. Dyer 131. 17. El. Dyer 340.

(l) Pasc. 31. El. Rot. 514. in Com. Banc. inter Carter pl. & Claypole & al. def. In Ejectione firma, & in Briefe de Error. Hil. 32. El. Rot. 791.

And it is to be knowne, that a Deed of feoffment beginning Omnibus Christi fidelibus, &c. or Sciant præsentes & futuri, &c. or the like, a Letter of Attorney may be contained in such a Deed; for one continent may containe diuers Deeds to seuerall persons, but if it be by Indenture betweene the Feoffor on the one part, and the Feoffee on the other part, * there a Letter of Attorney in such a Deed is not good, vnlesse the Attorney be made a partie in the Deed indented. Cont. 2 R. A. fol. 11. Cro. El. 905 pl. 10.

* Communis error facit jus (vt dicitur) in contrarium.

Now the authoritie of an Attorney implyed in the Law, is, though the Warrant be generall, to deliuer seisin: yet the Attorney cannot deliuer seisin within the view, for his Warrant is intendable in Law of an actuall and expresse liuerie, and not of a liuerie in Law, and so hath it beene resolued. See more hereof here next following.

Pasc. 3. El. in Com. Banc. in Yarhams case.

Vncore si liuerie & seisin ne soit fait en la vie celuy que fesoit le fait. Here albeit the Warrant of Attorney be indefinite, without limitation of any time, yet the Law prescribeth a time, as Littleton here saith, in the life of him that made the Deed: but the death not only of the Feoffor, of whom Littleton speaketh, but of the Feoffee also, is a countermand in Law of the Letter of Attorney, and the Deed it selfe is become of none effect, because in this case nothing doth passe before liuerie of seisin. For if the Feoffor dieth, the land descends to his heire, and if the Feoffee dieth, liuerie cannot be made to his heire, because then he should take by purchase, where heires were named by way of limitation. And herewith agreeth Bracton, Item oportet quod donationem sequatur rei traditio, etiam in vita donatoris & donatorii. Therefore a Letter of Attorney to deliuer liuerie of Seisin after the decease of the Feoffor, is voyd.

22. H. 6. 6.

Bract. li. 2. fo. 16. 40. Ass. pl. 38. 29. H. 6. 7. a. 14. E. 4. 2. 18. E. 3. 16. b. 11. H. 7. 13. &c.

Fourthly, In all cases the Attorney must pursue the Warrant in substance and effect that he hath to deliuer Seisin.

Fifthly, All this is to be vnderstood of sole persons, or of a Corporation or body consisting of one sole person, or a Bishop person, &c. But it holdeth not in a Corporation aggregate of many persons capable. And therefore if a Maior and Commonaltie make a Charter of feoffment, and a Letter of Attorney to deliuer Seisin, the Liuerie of Seisin is good after the decease of the Maior, because the Corporation neuer dieth. The like of a Deane and Chapter, Et sic de similibus.

18. H. 8. 3. 11. H. 7. 19.

Lastly, If the Lessor by his Deed license the Lessee for life or yeares, (which is restrained by condition not to alien without Licence) to alien, and the Lessor dieth before the Lessee doth alien, yet is his death no countermand of the Licence, but that he may alien, for the Licence exempteth the Lessee out of the penaltie of the Condition, and it was executed on the part of the Lessor as much as might be. And so was it resolued, Michael. 3. Iacob. in Communi Banco. As if the King doth license to alien in Mortmaine, and dieth, the Licence may be executed after.

Mich. 3. Ia. in Com. Banc. F. N. B. 223. 2. E. 3. offi. de Court. 29. Stanf. Prer. 30.

Sect. 67.

CSI le Lessee fait *waste.* Waste, Vastū dicitur à vastando, of wasting and depopulating: and for that Waste is often allea-

CItem si Tenements soient lesses a vn home p̄ terme de demy an, ou pur le

ALso if tenements be let to a man for terme of halfe a yeare, or for a quarter of a

gre

quarter de vn an, &c. En tiel case, si le lessée fait wast, & lessor auera enuers luy Briefe de Wast, & le Briefe dirra, Quod tenet ad terminum annorum: Mes il auera vn speciall Declaration sur le veritie de son matter, & le Count nabatera le Briefe, pur ceo que il puit auer nul auter briefe sur le matter.

yeares, &c. In this case if the Lessee commit waste, the Lessor shall haue a Writ of waste against him; and the Writ shall say, *Quod tenet ad terminum annorum:* but hee shall haue an especiall declaration vpon the truth of his matter, and the Count shall not abate the Writ, because hee cannot haue any other Writ vpon the matter.

ged to be in timber, which we call in Latine Maremium, or maresnium, or maresmium, it is good to fetch both of them from the original. First, Timber is a Saxon word. Secondly, Maremium is deriued of the French word Marreim, or Marrein, which properly signifieth timber.

An action of waste doth lie against Tenant by the curtesie, Tenant in Dower, Tenant for life, for yeares, or halfe a yeare, or gardian in chiualry, by him that hath the immediate estate of inheritance, for waste or destruction in houses, gardens, woods, trees, or in lands, meadowes, &c. or in exile of men to the disherison of him in the reuersion or remainder. There be two kinds of wastes, viz. voluntarie or actuall, & permissiue. (a) Waste may be done in houses, by pulling or prostrating them downe, or by suffering the same to be vncouered, whereby the spars or rafters, plaunchers, or other timber of the house are rotten. (b) But if the house be vncouered when the Tenant commeth in, it is no waste in the Tenant, to suffer the same to fall downe. But though the house be ruinous at the Tenants comming in, yet if he pull it downe, it is waste vnlesse he re-edifie it againe. (c) Also if glasse windowes (though glased by the Tenant himselfe) be broken downe, or carried away, it is waste, for the glasse is part of his house. And so it is of wainscot, benches, bowes, windowes, furnaces, and the like, annexed or fixed to the house, either by him in the reuersion, or the Tenant.

(d) Though there be no timber growing vpon the ground, yet the Tenant at his perill must keepe the houses from wasting. If the Tenant doe or suffer waste to be done in houses, yet if he repaire them before any action brought, there lieth no action of waste against him, but hee cannot plead, Quod non fecit vastum, but the speciall matter. v. fo: 283. a. & fo: 119. b.

A wall vncouered when the Tenant commeth in, is no waste if it be suffered to decay. (e) If the Tenant cut downe or destroy any fruit trees growing in the garden or orchard, it is waste, but if such trees grow vpon any of the ground which the Tenant holdeth out of the garden or orchard, it is no waste.

(f) If the Tenant build a new house, it is waste, and if he suffer it to be wasted, it is a new waste. (g) If the house fall downe by tempest, or be burnt by lightning, or prostrated by enemies, or the like, without a default of the Tenant, or was ruinous at his comming in, and fall downe, the Tenant may build the same againe with such materials as remaines, and with other timber which he may take growing on the ground for his habitation, but he must not make the house larger than it was. If the house be discouered by tempest, the Tenant must in conuenient time repaire it.

(h) If the Tenant of a Doue-house, Warren, Parke, Aiuarie, Estangues, or the like, doe take so many, as such sufficient store be not left as he found when he came in, this is waste, and to suffer the pale to decay, whereby the Deere are dispersed, is waste.

And it is to be obserued, That there is waste, destruction, and exile. Waste properly is in houses, gardens, (as is aforesaid) in timber trees, (viz. Oke, Ash, and Elme, and these bee timber trees in all places) either by cutting of them downe, or topping of them, or doing any act whereby the timber may decay. Also in Countries where timber is scant, and Beeches or the like are conuerted to building for the habitation of man, or the like, they are also accounted timber. (i) If the Tenant cut downe timber trees, or such as are accounted timber, as is aforesaid, this is waste, and if he suffer the young germins to be destroyed, this is destruction. (k) So it is, if the Tenant cut downe vnderwood, (as he may by Law) yet if hee suffer the young germins to be destroyed, or if he stub vp the same, this is destruction.

(l) Cutting downe of willowes, beech, birch, aspe, maple, or the like, standing in the defence and safeguard of the house, is destruction. (m) If there be a quickset fence of white thorne, if the Tenant stub it vp, or suffer it to be destroyed, this is destruction, and for all these & the like destructions an action of waste lieth. (n) The cutting of dead wood, that is, Vbi arbores sunt aridæ, mortuæ, cauæ, non existentes maremium, nec portantes fructus, nec folia in æstate, is

V. Merlb. ca. 23. 2. part of the Instit. + tho' without impeachm.t of wast, yet if she cut trees, &c. vpon the rem.r of ye inheritance belongs to her. Rep. 4. fol. 63. Herlakendens case. v. Rep. 11. fol. 81. 82, 83. & Rowlat. in Herlak. cas. contrad.

(a) 34. E. 3. Wast. 143.

(b) 40. Ass. p. 22. 2. Mar. Dyer 117. 23. H. 6. 24. 10 H. 7. 2. 44. E. 3. 44. 29. E. 3. 33. li. 4. fo. 63. 64. Herlakendens case.

(c) 22. H. 6. 18. 12. H. 8. 1. 13. H. 7. 21. 22. E. 4. 18. 21. E. 4. 39. 10. H. 7. 2. Reg. Iudic. 26.

(d) 44. E. 3. 21. 38. Ass. 1. 4. E. 3. Wast. 22. 10. El. Dyer 270. li. 5. fo. 119. in Whelpdales case. 19. E. 3. Wast. 30. 44. E. 3. 44.

(e) 7. H. 6. 38. 44. E. 3. 44.

(f) 42. E. 3. 21. 49 E. 3. 2. 9 H. 6. 52. 17. E. 2. Wast. 118.

(g) Lib. 4. fo. 63. Herlakendens case. 43. E. 3. 6. 26. E. 3. 76. 11. H. 4. 32. 12. H. 4. 5. 22. H. 6. 18. 19. E. 3. Wast, 30.

(h) Temps E. 1. wast. 128. Brit. f. 34. 5. R. 2. wast. 97. 12. H. 8. 1. Pl. Com. 322. 7. H. 3. Wast. 141.

(i) 22. H. 6. 12. 8. 9. H. 6. 10. 66. 11. H. 6. 1. F. N. B. 59. m.

(k) 20. E. 3. Wast. 32. 10. H. 7. 2. 42. E. 3. 6. b. 5. E. 4. 100. 41. E. 3. Wast. 82. 20. E. 3. Wast. 32. 12. E. 4. 1.

(l) 40. E. 3. 15. b. & 35. 12. E. 4. 1. 12. H. 8. 1. b. 10. H. 7. 2. 8. E. 2. Wast. 111. 4. E. 6. Wast. Br. 136.

(m) 46. E. 3. 17. 9. H. 6. 10. 12. H. 8. 1.

(n) 16. El. Dy. 332. 20. E. 3. Wast. 32. F. N. B. 59. m.

* If infant or feme couert copyr for life comit wast, & Lessor recouer in Action of Wast, yt shall bind yr Inh. Resm. couert, for ye Statute giues Action to recouer ye Land. ye Law is ye same in Oppawith &c. v. Withingham's case. 6. Rep. fo: 44.

no waste; but turning of trees to coles for fuell, when there is sufficient dead wood, is waste.

(o) If the Tenant suffer the houses to be wasted, and then fell downe timber to repaire the same, this is a double waste. (p) Digging for grauell, lime, clay, bricke, earth, stone, or the like, or for mines of metall, coale, or the like, hidden in the earth, and were not open when the Tenant came in, is waste, but the Tenant may dig for grauell or clay for the reparation of the house, as well as he may take conuenient timber trees.

(q) It is waste to suffer a wall of the sea to be in decay, so as by the flowing & reflowing of the sea, the meadow or marsh is surrounded, whereby the same becomes vnprofitable: but if it be surrounded suddenly by the rage and violence of the sea, occasioned by wind, tempest, or the like, without any default in the Tenant, (r) this is no waste punishable. So it is, if the Tenant repaire not the banks or wals against riuers, or other waters, whereby the meadowes or marshes be surrounded, and become rushy and vnprofitable.

(s) If the Tenant conuert arable land into wood, or è conuerso, or meadow into arable, it is waste, for it changeth not onely the course of his husbandrie, but the proofe of his euidence.

(t) The Tenant may take sufficient wood to repaire the wals, pales, fences, hedges and ditches, as he found them, but he can make no new: and he may take also sufficient plowbote, firebote, and other housbote.

☆ The Tenant cutteth downe trees for reparations and selleth them, and after buyeth them againe, and imploy them about necessarie reparations, yet it is waste by the vendition: he cannot sell trees, and with the money couer the house: Burning of the house by negligence or mischance is waste.

(u) If a man make a lease for life and by Deed grant that if any waste or destruction be done, that it shall be redressed by neighbours, and not by suit or plea, notwithstanding an action of waste shall lye, for the place wasted cannot be recouered without a plea.

(x) Bracton, Fleta, and Britton, doe vse the same diuision as is aforesaid, viz. Vastum, destructio, & exilium, in their proper signification.

Now somewhat is to be spoken of exile or destruction of men; Exile or destruction of villaines, or Tenants at will, or making them poore, where they were rich when the Tenant came in, whereby they depart from their tenures, is waste. (a) And yet the Statute of Glouc' speaketh not of exile, but it is comprehended vnder the generall word of Waste. The Statute of W. 1. hath destructionem, the Statute of Magna Charta hath vastum & destructionem, the Statute of Merlebridge hath vastum, venditionem & exilium in domibus, boscis, vel hominibus, &c.

But waste and destruction in their larger sense are words conuertible. (b) Item de hoc quod dicit vastum & exilium, sciendum est quod non sunt referenda ad eundem intellectum, sed vastum & destructio fere idem sunt, vastum idem est quod destructio, & è conuerso, & se habent ad omnem destructionem generaliter.

(c) Vastum autem & destructio fere æquipollent & conuertibiliter se habent in domibus, boscis, & gardinis, sed exilium dici poterit, cum serui manumittantur & à tenementis suis injuriose ejiciantur: fortuna autem & ignis vel hujusmodi euentus inopinati omnes tenentes excusant.

(d) No person shall haue an action of waste, vnlesse he hath the immediate state of inheritance, but sometime another shall ioyne with him for conformitie. As if a reuersion be granted to two, and to the heires of one; they two shall ioyne in an action of waste: and in like sort the suruiuing Coparcener, and the Tenant by the Curtesie shall ioyne in an action of waste: and if two Ioyntenants be, and to the heires of one of them, and they make a lease for life, they shall ioyne in an action of waste. (e) If the estate taile determine, hanging the action of waste, and the plt. become Tenant in taile after possibilitie, the action of waste is gone. (f) If the Tenant doth waste, and he in the reuersion dieth, the heire shall not haue an action of waste for the waste done in the life of the Ancestor; nor a Bishop, Master of an Hospitall, Parson, or the like in the time of the Predecessor. (g) And so if Lessee for yeares doth waste, and dieth, an action of waste lyeth not against the Executor or Administrator, for waste done before their time. But if two Coparceners be of a reuersion, and waste is committed, and the one of them die, the Aunt and the Neece shall ioyne in an action of waste.

(h) If lands be giuen to two and the heires of one of them, hee that hath the Fee shall not haue an action of waste vpon the Statute of Glouc': for that they are Ioyntenants, but his heire shall haue an action of waste against Tenant for life.

Note after waste done there is a special regard to be had to the continuance of the reuersion in the same state that it was at the time of the waste done, for if after the waste hee granteth it ouer, though he taketh backe the whole estate againe, yet is the waste dispunishable. So if he grant the reuersion to the vse of himselfe and his wife, and of his heires, yet the waste is dispunishable, and so of the like, because the estate of the reuersion continueth not, but is altered, and consequently the action of waste for waste done before (which consist in priuitie) is gone.

(i) A Prohibition of waste did lye against Tenant by the Curtesie, Tenant in Dower, & a Gardian in chiualry by the Common Law, but not against Tenant for life, or yeares, because they

* And if Tenant in tail apres possibility ... but Iures y Lessor shall haue ... for as he had but a particular estate in y Land, he ... not haue an absolute interest in y Trees, but he shall not be punished in Waste; &c. Kir. ... state is not within y Stat. Glor. C. 5. Herlakenden's case Rep. 4. fol. 63.

(a) Glouc. cap. 5. W.1. cap. 21. Magna Charta, cap. 4. Merleb. cap. 23.
(b) Bract. lib. 4. fol. 316. & 317.
(c) Fleta lib. 1. cap. 11.
(d) 7.E.3. 54.b. 2.H.5.7. 22.H.6. 24. 13.H.7. 27.H.8.13. F.N.B. 55.f. 8.R.2. Waste.147.
(e) 2.H.4.22.
(f) 2.H.4.2. F.N.B. 49.O.
(g) 10.E.4.1. 49.E.3.25. 23.H.8. tit. Waste. Br. 38.E.3.17. 44.E.3.8. 45.E.3.3. 46.E.3.31. 11.E.2. Waste.115. 2.Mar. Waste.117. 8 E.2. Waste.110.
(h) 24.E.3.27. 50.E.3.3. 8.H.6.13.
(i) Bract. lib.4.f.315.316. 317. Fleta lib.1. cap.11. Brit. fol.168. Doct. & Stud. lib.2. ca.1. 12.H.4.3. 10.H.3. Waste.142. 20 H.6.1. 4.H.3. Waste.140. 9.H.3. ibid.136.

(o) 24.E.3.4. 20.E.3. Waste 32. F.N.B.59.b. 19.E.3. Waste.30.
(p) 22.H.6 18.b. 9.E.4.35. 41.E.3. Waste.82. 17.E.3. 7. 9.H.6.66. 2.H.7.24. F.N.B.59.n. & 145.c. 20.E.3. Waste.32.
(q) Ann 6. El. Of the Report of Iustice Dalison In Griffins case. 17 E.3. 65. Brit. fol.168.b.
(r) 20.H.6 1. F.N.B. 59.n. 6.El vbi supra.
(s) 29.H.8. Dyer 37. 22.H.6.24. 10.H.7.5.a. 44.E.3.44.
(t) 16.El. Dyer 332. 21.H.6.47.
☆ L.5.E.4.100. 12.E.3. Waste.28. 48.E.3.25. Temps E.1.123. 20.E.3. Waste.32. 19.E.3. Waste.30.
(u) 3.E.3. Waste.5. Bracton lib.4.fol.315.
(x) Bracton fol.168. Fleta lib.1. cap 11. 16.H.3. Waste.135. 3.E.2. tit. Waste.2. 17.E.2. Waste.118. 10 H.7.2. H 6.11. 9 H 6.52. 11.E.2. Waste.113. F.N.B.56.H. & 55.c. Regist. judic. 25.
(a) Glouc. cap.5. W.1. cap.21. Magna Charta, cap.4. Merleb. cap.23.
(b) Bract. lib.4. fol.316. & 317.
(c) Fleta lib.1, cap.11.
(d) 7.E.3 54.b. 2.H.5.7. 22.H.6 24. 13.H.7. 27.H.8.13. F.N.B 55.f. 8.R.2. Waste.147.
(e) 2.H.4.22.
(f) 2.H.4.2. F.N.B.49.O.
(g) 10.E.4.1. 49.E.3.25. 23.H.8. tit. Waste. Br. 38.E.3.17. 44.E.3.8. 45.E.3.3.46.E.3.31. 11.E.2. Waste.115. 2.Mar.Waste.117. 8 E.2. Waste.110.
(h) 24.E.3.27. 50.E.3.3. 8.H.6.13.
(i) Bract.lib.4.f.315.316. 317. Fleta lib.1. cap.11. Brit.fol.168. Doct.& Stud. lib.2. ca.1. 12.H.4.3. 10.H.3. Waste.142. 20 H.6.1. 4.H.3. Waste.140. 9.H.3, ibid.136.

* Rep. 10. f. 139

they came in by their owne act, and he might haue prouided that no waste should be done. (i) A tenant by the curtesie or in dower can hold of none but of the heire, and his heires by descent, and therefore if they grant ouer their whole estate, and the grantee doth waste, yet the heire shall haue an Action of waste against them, and recouer the land against the assignes: but if the heire either before the assignement had granted, or after the assignement doth grant the reuersion ouer, the stranger shall haue an Action of waste against the assignee, because in both Cases the priuity is destroyed: in all other Cases the Action of waste shall be brought against him that did the waste (for it is in nature of a trespasse) vnlesse it be in the case of a Ward (k) for there if the Gardian doth waste and assigne ouer, the action lieth against the assignee (l). A Gardian shall not be punished for waste done by a stranger, it is so penall vnto him, for he shall lose the Wardship both of the body and of the land, though the waste be but to the value of twenty shillings, and if that sufficeth not to satisfie for the waste, then he shall recouer damages of the waste ouer and aboue the losse of the Ward. But tenant by the curtesie, tenant in dower, tenant for life, yeeres, &c. shall answer for the waste done by a stranger, and shall take their remedy ouer. (m) But if there be two ioyntenants of a Ward, and one of them doe waste both shall answer for it.

(n) If the Gardian doth waste and the heire within age bring an action of waste, the Gardian shall lose the Wardship as is aforesaid, but if the heire bring an action of waste at his full age, then he shall recouer treble damages, for then he cannot lose the Wardship.

(o) An Infant and Baron and Feme shall be punished for waste done by a stranger, and so shall the wife that hath the state by surmiour for waste done by the husband in his life time, if she agree to the Estate, though there hath beene variety of opinions in our Bookes.

(p) But if Feme tenant for life take husband, and the husband doth waste, and the wife dieth, no action of waste lieth against the husband in the tenure, for he was seised but in iure uxoris, and his wife was tenant of the freehold, but if a Feme be possessed of a terme for yeeres, and take husband, and the husband doth waste, and the wife dieth, the husband shall bee charged in an action of waste, for the Law giueth the terme to him.

(q) If tenant for life grant ouer his Estate vpon condition, and the grantee doth waste, and the Grantor re-entreth for the condition broken, the action of waste shall bee brought against the grantee, and the place wasted recouered.

(r) If a lease for life be made to a Villeine, and waste is done, the Lord entreth, he shall not be punished for the waste done before, but for waste done after, he shall.

(s) An occupant shall be punished for waste, and so if an Estate be made to A. and his heires during the life of B. A. dieth, the heire of A. shall be punished in an action of waste.

(t) If a lease be made to A. for life the remainder to B. for life, the remainder to C. in fee, in this case where it is said in the Register, and in F. N. B. that an Action of waste doth lie, it is to be vnderstood after the death or surrender of B. in the meane remainder, for during his life, no action of waste doth lie.

But if a lease for life be made, the remainder for yeeres, the remainder in fee, an action doth lie presently during the terme in remainder, for the meane terme for yeeres is no impediment.

But if a man make a lease for life or yeeres, and after granteth the reuersion for yeeres, the lessor shall haue no Action of waste during the yeeres, for he himselfe hath granted away the reuersion, in respect whereof he is to maintaine his action. (*) Otherwise it is, if he had made a lease in reuersion which had beene but a future interest, for there an action of waste lieth during the terme, and so is the booke to be vnderstood, and the terme shall be saued in that case.

(u) No action of waste lieth against a gardian in socage, but an account or trespasse, nor against tenant by statute staple, &c. or elegit.

(w) If tenant for life or yeeres or their assigne make a grant ouer, and notwithstanding take the profits, an action of waste lieth against him, by him in the reuersion or remainder by the statute, Nota.

(x) If waste be done sparsim here and there in woods, the whole woods shall be recouered, or so much wherein the waste sparsim is done. And so in houses so many roomes shall be recouered wherein there is waste done, but if waste be done sparsim throughout, all shall be recouered. It hath beene said that if the hall be wasted, the whole house shall be recouered, because the whole house is denominated of the hall: but later authority is to the contrary.

(y) There is waste of a small value, as Bracton saith, Nisi vastum ita modicum sit propter quod non sit inquisitio facienda. Yet trees to the value of three shillings and foure pence, hath beene adiudged waste, and many things together may make waste to a value. But let vs now returne to our Author.

¶ *Briefe de waste.* See in the Register fiue seuerall Writs of waste; Two at the Common Law for waste done by tenant in Dower, or the Gardian, and three by speciall or Statute Law, for waste done by tenant for life, for yeeres and tenant by the curtesie.

¶ *Briefe*

(i) F.N.B.56. e.& f. Temps E.1. wast. 122. 18.E.3.3.30.E.3 16. 38.E.3.22. 11 H.4.18. 4.E.3.25. Regist.72.lib.3. fol.23. Walkers case.li.9. fo.142. Beaumonts case.

(k) 17 E.3.21. 26. E.3. Waste 10. *v: FNB. 56: a al ront.*

(l) 12.H.4.3. Bract.lib.4. 316.317. Fleta lib.2.c.11. Brit.168 3. E.3. Wast. 146.44.E 3.27. F.N.B.59.a & 60.g.& T.

(m) 33 E.3.Wast.6.

(n) 44.E.3.27.48.E.3.10. F.N.B.60.t.12.H.4.3. 19.E.2. Wast.117. 42.E. 3. Wast.81. 3.E.2. Wast.5. 7.E.3.12.

(o) 15.H.3.Wast.16 tē. E.1.Wast.128.2.H.4.3.a 3.E.3.13.76. 11.Ass.11. 21.H.6.14.b.33.H.6.31.a 42.E.3.22. 19.E.3. breue 246.46.E.3.25. 7.H.6.2. b.3.E.3.46. 10.E.3.17. 18.9.E.3.41.9.E.3.breue 246. 17.E.4.7. 9.H.6.51. F.N.B.56.B.Do.& Stu. lib.2.c.1.23.H.8.Wast. 138.lib.8.fo.44.Willingh ams case. *FNB 59:1*

(p) Lib.5.fol.75.Cliftons case.49.E.3.25.46.E.3. Wast.Statham.10.H.6. 11.12.

(q) 30.E.3.16.

(r) 48.E.3.19.

(s) Lib.6.fol.37.le Deane and Chapt.of Worcest. case.lib.10.fol.9.b.

(t) 4.E.3.18.Cotes case. 3.E.3.18.F.N.B.58.c.& 59.h.50.E.3.3.33.E.3. Wast.144.11.E.3.resceit. 118.10.E.4.9.Regist.74. lib.2.fol.92. nter Paget & Carie in Ringhams case. lib.5.fol.76.Pagets case. lib.10.f.44.Iennings case. F.N.B.59.h 4.E.3.18. *FNB 48:c.*

(*) 4.E.3.18.F.tit. Wast. 18.

(u) Merlebridge cap.17. 21.E.3.30.16.E.3.tit. Wast.100.12.E.3.Wast. 107.2.E.2 Wast.1.28.H. 6.Wast.9.32.H.6.7. F.N.B.59.H. *48: k. ront*

(w) 11.H.6.cap.5. Lib.5.f.77.Booches case.

(x) 8.E.3 Wast.112.4.E.6. Wast.136.4.E.3.32.15. H.7.11.15.E.3.Wast.1.4. Temps E.1. Wast.134. 18.H.8.1.

(y) Bract.lib.4.fol.316. 38.E.3.7.b.34.E.3.Wast. 146.14.H.4.11.b.F.N.B. 60.c.Temps E.1.Wast. 124.19.H.6.8. *FNB 60: p.*

v: FNB: 60. t.

(z) Vi. Bract. li. 5. f. 413. b. Fleta lib. 2. cap. 12. See the second part of the Institutes, W. 2. cap. 24.

¶ *Briefe Dirra.* The Writs originall of the Register (z) (as Bracton saith) formed, and of course had their first authority by act of Parliament, and therefore without an act of Parliament they cannot be altered, or changed, which is proued by the statute of W. 2. cap. 24 whereby remedy is prouided in many cases. But heare what Bracton saith. Sunt quædam breuia formata in suis casibus, & quædam de cursu, quæ concilio totius regni sunt approbata, quæ quidem mutari non possunt, absque eorundem contraria voluntate. Magistralia autem sæpe variantur secundum varietatem casuum, &c. And this is the reason that in this case of halfe a yeere the words of the Writ shall be without change, Quod tenet ad terminum annorum, and the pl' must make a speciall declaration according to his case, for otherwise he should be without remedy. In this particular case the statute of Glouc. cap 5. which giueth the Action of Waste against the Lessee for life or yeeres (which lay not against them at the Common Law) speaketh of one that holdeth for tearme of yeeres in the plurall number, and yet here it appeareth by the authority of Littleton, That although it be a penall Law, whereby treble damages and the place wasted shall be recouered, yet a tenant for halfe a yeere being within the same mischiefe, shall be within the same remedie, though it be out of the letter of the Law, for Qui hæret in litera, hæret in cortice, which is an excellent example, whereupon in many like cases a man may settle a certaine iudgement. You may obserue in the said ancient authors, what remedy was giuen for waste at the Common Law, and against whom, and what was adiudged waste, destruction, and exile.

De vasto. Bract. li. 4. f. 315. 316. 317. Fleta l. 2. c. 11. & l. 5. c. 3. Britton fol. 162. & 168. 46. E. 3. 31. F. N. B. 60. c. 4. E. 4. 13. 37. H. 6. 26. b. 7 H. 7. 2. 14. H. 8 12. 18. E. 3. 27.

Vide Marlebridge ca. 23. 2. part of the Institutes.

In many cases a tenant for life or yeeres may fell downe timber to make reparations, albeit he be not compellable thereunto, and shall not be punished for the same in any action of waste. As (a) if a house be ruinous at the time of the lease made, if the lessee suffer the house to fall downe hee is not punishable, for hee is not bound by Law to repaire the house in that case. And yet if he cut downe timber vpon the ground so letten, and repaire it, he may well iustifie it, and the reason is, for that the Law doth fauour the supportation and maintenance of houses of habitation for mankind. And therefore if two or more ioyntenants or tenants in common be of a house of habitation, and the one will not repaire the house, the other shall haue by the Law a Writ De reparatione facienda, and the Writ saith, Ad sustentationem eiusdem domus teneantur. So it is if the Lessor by his Couenant vndertaketh to repaire the houses, yet the lessee (if the lessor doth it not) may with the timber growing vpon the ground repaire it though he be not compellable thereunto. In the same manner, if a man make a lease of a house and land without impeachment of waste for the house, yet may the Lessee with the timber vpon the ground repaire the house, though he may vtterly waste it if he will, and so in many other cases. A man hath land in which there is a Mine of Coales, or of the like, and maketh (b) a lease of the land (without mentioning any Mines) for life or for yeeres, the lessee for such Mines as were open at the time of the lease made, may dig and take the profit thereof. (c) But he cannot dig for any new Mine, that was not open at the time of the lease made, for that should be adiudged waste. And if there be open Mines, and the owner make a lease of the land, with the Mines therein, this shall extend to the open Mines only, and not to any hidden Mine, but if there be no open Mine, and the lease is made of the land together with all Mines therein, there the lessee may dig for Mines, and inioy the benefit thereof, otherwise those words should be void. I haue beene the more spacious, concerning this learning of waste, for that it is most necessary to be knowne of all men.

(a) 12. H. 8. 1.

F. N. B. fo. 127.

(b) 17. E. 3. 7. 9. H. 6. 66. 22. H. 6. 18. 9. E. 4. 35. 12. E. 4. 8. F. N. B. 149. c. & 59. n.

(c) Lib. 5. fo. 12. Sanders case.

Now hath Littleton spoken of an estate for life, and an estate for yeeres in seuerall persons. Now let vs see how they stand simul and semel in one person.

If a man letteth Lands to another for life, the remainder to him for 21. yeeres, hee hath both estates in him so distinctly, as he may grant away either of them; for a greater estate may vphold a lesser, but not è conuerso, and therefore if a man make a lease to one for 21. yeeres, the remainder to him for terme of his life, the lease for yeeres is drowned.

(d) 19. E. 2. couenant. 25. 29. E. 3. couenant. 24. 32. E. 3. Quid iuris cl 5. 37. E. 3. 29. 46. E. 3. 31. 40. E. 3. 5. 11. H. 4. 34. 24. Eliz. Dyer. 309. M 40. & 41. Eliz. in Com. Banc. Rot. 22. 15 in treſp. inter Sparke & Sparke. Hill. 42. Eliz. Sir Iohn Sauages case in Curia Wardorum.

(d) If a man make a lease for life to one, the remainder to his Executors for 21. yeeres, the terme for yeeres shall vest in him, for euen as Ancestor and Heire are correlatiua, as to Inheritance: (as if an estate for life be made to A. the remainder to B. in taile, the remainder to the right heires of A. the fee vesteth in A. as it had beene limited to him and his heires) euen so are the Testators and the Executors correlatiua as to any Chattell. And therefore if a lease for life be made to the testator, the remainder to his Executors for yeeres, the Chattle shall vest in the lessee himselfe, as well as if it had beene limited to him and his Executors.

CHAP.

Chap. 8. Sect. 68.

Of Tenant at will.

¶ Tenant a volunt eſt ou terres ou tenements ſont leſſes per vn home a vn auter, a auer & tener a luy a la volunt le Leſſor, per force de quel leaſe le Leſſee eſt en poſſeſſion, en tiel cas le leſſee eſt appel tenant a volunt, pur ceo que il nad aſcun certaine ne ſure eſtate, car le Leſſor luy poit ouſter a quel temps que il luy plerroit: vncore ſi le leſſee emblea le terre & le Leſſor apres lemblée, & deuant q̄ les blées ſont matures luy ouſta, vncore le leſſee aūra les blées, & aūra fräk entr̄, egres & regres a ſcier & de carier les blées, pur c̄ q̄ il ne ſcauoit a quel temps le leſſor voloit ẽtre ſur luy. Auterm̄t eſt ſi tenant pur terme dans q̄ conuſt le fine de ſon terme emblea ſa terre, & le terme eſt finy deuant que les blées ſont matures, en ceo cas le leſſor, ou celuy en la reuerſion

Tenant at will is, where lands or tenements are let by one man to another, to haue and to hold to him at the will of the Leſſor, by force of which leaſe, the Leſſee is in poſſeſſion, In this caſe the Leſſee is called Tenant at will, becauſe hee hath no certain nor ſure eſtate, for the Leſſor may put him out at what time it pleaſeth him. Yet if the Leſſee ſoweth the land, and the Leſſor after it is ſowne, and before the corne is ripe put him out, yet the Leſſee ſhall haue the corne, and ſhall haue free entrie, egreſſe and regreſſe to cut and carrie away the corne, becauſe hee knew not at what time the Leſſor would enter vpon him. Otherwiſe it is if Tenant for yeares, which knoweth the end of his terme, doth ſow the land, and his terme endeth before the corn is ripe; In this caſe the Leſſor, or hee in the reuerſion ſhall

¶ *Tenant a volunt eſt, ou terres ou tenements, ſont leſſes per vn home a vn auter, a auer & tener a luy a la volunt le Leſſor, &c.* Fleta lib. 3. cap. 15.

It is regularly true that euerie leaſe at will muſt in Law be at the will of both parties, and therefore when the leaſe is made, To haue and to hold at the will of the Leſſor, the Law implyeth it to be at the will of the Leſſee alſo; for it cannot be onely at the will of the Leſſor, but it muſt be at the will of ꝑ Leſſee alſo. And ſo it is when the leaſe is made, To haue and to hold at the will of the Leſſee, this muſt be alſo at the will of the Leſſor; and ſo are all the Bookes, that ſeeme prima facie to differ, clearely reconciled. 18.H.6.1. 38.H.6.21. 9.E.4.1.b. 10.E.4.18.b. 21.H.7.38. 13.H.8.16. 14.H.8.13,14.

¶ *Pur ceo que il nad aſcun certaine ou ſure eſtate, &c.* Alia poſſeſſio eſt præcaria & alia pro prece conceſſa, vt ſi quis ſine ſcripto conceſſerit alicui habitationem vel vſumfructum in re ſua tenenda ad voluntatem ſuam, hæc quidem poſſeſſio præcaria eſt & nuda, eo quod tempeſtiue & intempeſtiue pro voluntate Domini poterit reuocari. Fleta lib. 3. cap. 15. Ino 775 Yel. 74. 3 Co 157

¶ *Vncore ſi le leſſee emblea la terre, & le leſſor apres le embleer, &c.* The reaſon of this is, for that the eſtate of the Leſſee is vncertaine, and therefore leſt the ground ſhould be vnmanured, which ſhould be hurtfull to the Common-wealth, hee ſhall

shall reape the Crop which he sowed in peace, albeit the Lessor doth determin his will before it be ripe. And so it is if he set roots, or sow hempe or flax, or any other annuall profit, if after the same bee planted, the Lessor oust the Lessée, or if the Lessee dieth, yet he or his Executors shall haue that yeares crop. But if he plant young fruit trees, or young Okes, Ashes, Elmes, &c. or sow the ground with Acornes, &c. there the Lessor may put him out notwithstanding, because they will yeld no present annuall profit. And this is not only proper to a Lessee at will, that when the Lessor determines his will that the Lessee shall haue the corne sowne, &c. but to euerie particular tenant that hath an estate incertaine, for that is the reason which Littleton expresseth in these words (Pur ceo que il nad aſcun certaine ou ſure eſtate.) And therefore if Tenant for life soweth the ground, and dieth, his Executors shall haue the corne, for that his estate was vncertaine, and determined by the act of God. And the same Law is of the Lessee for yeares of Tenant for life. So if a man be seised of land in the right of his wife, and soweth the ground, and he dieth, his Executors shall haue the corne, and if his wife die before him he shall haue the corne. But if husband and wife be Joyntenants of the land, and the husband soweth the ground & the land surviueth to the wife, it is said (a) that she shall haue the corne. If tenant pur terme dauter vie soweth the ground and Cesty que vie dieth, the Lessee shall haue the corne. If a man seised of lands in fee and hath issue a daughter and dieth, his wife being enseint with a son, the daughter soweth the ground, the sonne is borne, yet the daughter shall (b) haue the corne, because her estate was lawfull, and defeated by the act of God, and it is good for the Common wealth that the ground bee sowne. (c) But if the Lessee at will sow the ground with corne, &c. and after he himselfe determine his will and refuseth to occupie the ground, in that case the Lessor shall haue the corne because hee loseth his rent. And if a woman that holdeth land Durante viduitate sua soweth the ground and taketh husband (d) the Lessor shall haue the emblements, because that the determination of her owne estate grew by her owne act. But where the estate of the Lessee being incertaine is defeasible by a right paramount, or if the lease determine by the act of the Lessee as by forfeiture, condition, &c. (e) There he that hath the right paramount, or that entreth for any forfeiture, &c. shall haue the corne.

If a Disseisor sow the ground and seuer the corne, and the Disseisee re-enter (f) hee shall haue the corne because he entreth by a former title, and seuerance or remouing of the corne altereth not the case, for the regresse is a recontinuation of the Freehold in him in iudgement of Law from the beginning.

(g) If Tenant by Statute Merchant soweth the ground, and then a sudden and casual profit falleth by which he is satisfied, he shall haue the emblements.

¶ *Le Lessor luy puit ouster.* There is an expresse ouster and implyed ouster, an expresse, as when the Lessor commeth vpon the land, & expressely forewarneth the Lessee to occupie the ground no longer; an implyed, as if the Lessor without the consent of the Lessee enter into the land & cut downe a tree, this is a determination of the will, for that it should otherwise be a wrong in him, vnlesse the trees were excepted, and then it is no determination of the will, for then the act is lawfull albeit the Will doth continue. If a man leaseth a Mannor at will whereunto a Common is appendant, if the lessor put in his beasts to vse the Common, this is a determination of the will. The Lessor may by actuall entrie into the ground determine his will in the absence of the Lessee, but by words spoken from the ground the will is not determined vntill the Lessee hath notice. No more than the discharge of a Factor, Attorney, or such like in their absence is sufficient in Law vntill they haue notice thereof.

(a) If a woman make a lease at will reseruing a rent and shee taketh husband, this is no countermand of the lease at will, but the husband and wife shall haue an action of debt for the rent, and so it is if a lease be made to a woman at will reseruing a rent, and the Lessee taketh husband, this is no countermand of the lease, but the Lessor may haue an action of debt or distreine them for the rent: so if the husband & wife make a lease at will of the wifes land reseruing a rent and the husband die, yet the lease continueth: In like manner if a lease bee made by two to two others at will, and the one of the Lessors or of the Lessees die, the lease at will is not determined in neither of those cases; which are necessarie points to be knowne.

¶ *Apres lembleer, & deuant que les blees ſont matures.* Then put the case that the corne is ripe & ready to cut downe, and the Lessor before the Lessee reapeth it, enter, and put out the Lessee, whether shall the Lessee haue the corne? and it is without all question that the lessee shall haue it, for by the same reason that he shall haue it when he is put out before it

auera les blées, pur ceo que le termor conuſt le certaintie de ſ terme quant ſ time ſerroit finy.

haue the corne, because the Lessee knew the certaintie of his terme and when it would end.

18.E.4.18.

Temps E.1.br.25.
10.Ass.pl.6.
10.E.3.29.
46.E.3.1.
7.H.4.17.
7.Ass.19.
Lib.5.106. Olands case.

(a) 8.Ass.21.
8.E.3.54.
Dyer 316.

(b) 18.H.6.6.

(c) Lib.5.fol. 116 Olands case.

(d) Olands case vbi supra.

(e) 33.Ass.trespas.F.254.
42.E.3.25.
Olands case. Vbi supra.

(f) 27.H.6.1. 37.H.6.6.
22.E.4.45. 14.E.4.6.
35.E.4.31. 2.H.7.1.
3.H.7.17. 12.H.7.25.
10.H.4.1. 28.H.8.32.
Dyer.

(g) 44.E.3.15.
Plow.lib.3.cap.15.

(h) 35.H.6.24. 21.H.6.9.
1.E.4.5. 21.E.4.5.
Pl.Com. parton de Hoylands case.

24.E.4.6.
8.E.4.11.&c.

(a) Lib.5.fol.10. Hensteads case.
10.Eliz. Dier 269.b.

it bee ripe, hee shall haue it when hee is put out when it is ripe, Et vbi eadem est ratio, ibi idem ius.

¶ *Et auxi franke entrie, egres & regres.* (b) For when the Law doth giue any thing to one, it giueth impliedly whatsoeuer is necessary, for the taking and inioying of the same, Quando lex aliquid alicui concedit, concedere videtur & id sine quo res ipsa esse non potest, and the Law in this case driueth him not to an action for the corne, but giueth him a speedy remedy to enter into the Land, and to take and carry it away, and compelleth not him to take it at one time, or to carry it before it be ready to be carried; and therefore the Law giueth all that which is conuenient, viz. free entry, egresse and regresse as much as is necessary.

(b) Temps E.1 tit. grant 4. 9.E.4.35. 5.E.3 resp.13. 21.H 7.14.b. 8.H.6.18.b. 2.R.2. barre 217. 14.H.8 2.27.H.8.18.b.

If the Lessee be disturbed of this way which the Law doth giue vnto him, he shall haue his action vpon his case and recouer his damages, and this action the Law doth giue vnto him; for whensoeuer the law giueth any thing, it giueth also a remedy for the same. But here is to be obserued a diuersity betweene a priuat way, whereof Littleton here speaketh, and a common way. For if the way be a common way, if any man be disturbed to goe that way, or if a ditch be made ouerthwart the way so as he cannot go, yet shall he not haue an action upon his case, and this the law prouided for auoiding of multiplicity of suits, for if any one man might haue an action, all men might haue the like. But the law for this common nusance hath prouided an apt remedy, and that is by presentment in the Leet or in the Corne, vnlesse any man hath a particular damage, as if he and his horse fall into the ditch, whereby he received hurt and losse, there for this speciall damage which is not common to others, he shal haue an action vpon his case, and all this (c) was resolued by the Court in the Kings bench: And in that case it was said that it had beene adiudged in that Court betweene Westbury and Powel, that where the Inhabitants of Southwarke had by custome a watering place for their cattell which was stopped vp by Powel, that in that case any Inhabitant of Southwarke might haue an action, for otherwise they should be without remedy because such a nusans is not presentable in the Leet or Corne: Note the diuersity.

(c) 27.H.8.27. 2.E.4.9. 5.E.4.2. Tr.41.Eliz. betweene Finienx and Houenden. Vid.lib.5. fol.72. Williams case.

There be three kinde of wayes, whereof you shall (d) reade in our ancient bookes. First a foot way, which is called Iter, quod est ius eundi vel ambulandi hominis, and this was the first way.

(d) Fleta lib.4. ca.27. Bracton lib.4. fol.232.

The second is a foot way and horse way, which is called actus ab agendo: and this vulgarly is called packe and prime way, because it is both a foot way, which was the first or prime way, and a packe or drift way also.

The third is via or aditus, which containe the other two, and also a cart way, &c. for this is ius eundi, vehendi, & vehiculum & iumentum ducendi; and this is twofold, viz. Regia via, the Kings high way for all men, & communis strata, belonging to a City or Towne, or betweene neighbours and neighbours. This is called in our bookes chimin, being a French word for a way, whereof commeth chiminage chiminagium, or chimmagium, which signifieth a Toll due by custome; for hauing a way thorow a Forrest; and in ancient Records it is sometime also called Pedagium. Cowell Int.

32.E.3. barre 261. 27.E.3.78. 6.E.3.23. Carta de foresta cap.14.

If the Lessee at will by good husbandry and industry, either by ouerflowing or trenching, or compassing of the meadowes, or digging vp of bushes or such like, make the grasse to grow in more abundance, yet if the Lessor put him out, the Lessee shall not haue the grasse, because that the grasse is the naturall profit of the earth. And the same Law is if he doth sow Hayseed, and thereby increaseth the grasse.

¶ *Auterment est si tenant pur terme dans que conust le fine de son terme, &c.* Well said Littleton (which knoweth the end of his terme) that is, where the end of the terme is certaine, but where the Lease for yeeres depends upon an incertainty, as vpon the death of tenant for life being made by him, or of a husband seised in the right of his wife, or the like, there it is otherwise.

Q: Is p ans finy al Mich, & lan p vr ifsint vnsiasonable p ls blees ne sont maturs, ou apt p carriage p reason dl weather &c.

Section 69.

¶ Item si vn mese soit lesse a vn home a tener a volunt, p force de quel le lessee enter en le mese, deins quel mese

Also if a house be letten to one to hold at will, by force whereof the lessee entreth into the house, & brings his housheld-

¶ *Si vn mese soit lesse a vn home a tener a volunt, &c.* The reason of this is euident vpon that which hath beene said before.

¶ *Mese*, or Maison,

son, called in Legall Latine Meſſuagium, containeth (as hath beene ſaid) the Buildings, Curtelage, Orchard, and Garden.

Cottage, Cotagium is a little houſe without land to it. (a) See 31.Eliz.cap.1.and Cottagers in Doomeſday Booke are called Cotterelli: and in ancient Records haga ſignifieth a houſe. If a man hath a houſe nere to my houſe and he ſuffereth his houſe to be ſo ruinous, as it is like to fall vpon my houſe, (b) I may haue a writ de domo reparanda, and compell him to repaire his houſe. But a Præcipe lieth not de domo, but de meſſuagio.

(a) 31.El.ca.1.in Doomſday.

(b) Reg.153.F.N.B.127. 4.E.2.Vouch. 244. Six acres of land may be parcell of a houſe.

¶ *Per reaſonable temps.* (c) This reaſonable time ſhall bee adiudged by the diſcretion of the Iuſtices, before whom the cauſe dependeth; and ſo it is of reaſonable fines, cuſtomes, and ſeruices, vpon the true ſtate of the caſe depending before them: for reaſonableneſſe in theſe caſes belongeth to the knowledge of the Law, and therefore to be decided by the Iuſtices. (d) Quam longum eſſe debet non definitur in jure, ſed pendet ex diſcretione Iuſticiariorum: And this being ſaid of time, the like may be ſaid of things incertaine, which ought to be reaſonable; for nothing that is contrary to reaſon, is conſonant to Law.

(c) 22.E.4.27.34.H.6.40.

(d) Bract.li.2.ca.52.b.

(e) 2.H.6.15.21.H.6.30.

¶ (e) *Sicome home ſeiſi dun meſe en fee ſimple, ou fee taile, &c.* This is ſo euident, as it needeth no explanation.

il poꝛta ſes vtenſils de meaſon, & puis le Leſſoꝛ luy ouſta, ſuncoꝛe il auera franke entre egreſſe & regreſſe en meſme le meſe per reaſonable temps, de carrier ſes biens & vtenſils. Sicome home ſeiſie dun meſe en fee ſimple, fee taile, ou pur terme de vie, le quel ad certaine biens deins m̃ le meſe, & fait ſes executs, & dēy, quecunque apres ſa moꝛt ad l' meſe, uncoꝛ les executoꝛs aſſont frank entry egreſſe & regres ǒ carier hoꝛs de meſme le meſe les bñs lour teſtatoꝛ per reaſonable temps.

ſtuff into the ſame, and after the Leſſor puts him out, yet hee ſhall haue free entrie, egreſſe and regreſſe into the ſaid houſe, by reaſonable time to take away his goods and Vtinſels. As if a mã ſeiſed of a meſe in fee ſimple, fee taile, or for life, hath certaine goods within the ſaid houſe, and makes his Executors, and dieth, whoſoeuer after his deceaſe hath the houſe, his Executors ſhall haue free entrie egreſſe and regreſſe to carry out of the ſame houſe the goods of their teſtator by reaſonable time.

Sect. 70.

THere it appeareth, That if the Feoffee doth enter, he is tenant at Will, becauſe hee entreth by the conſent of the Feoffor.

¶ *Et deliuer a luy le fait.* Albeit the Deed be deliuered vpon the ground, yet doth it not amount to a liuery of Seiſin of the Land; for it hath his naturall effect to make it a Deed. (f) Donationum alia perfecta, alia incepta & non perfecta: Vt

(f) Flet.li.3.ca.3 & ca.15. 43.E.3.tit.feof.&faits 51. 35.H.8. Feof. Br.27.Aſſ. 61. 38.Aſſ.2. 39.Aſſ.12. 41.E.3.17. lib.6. fol.26. Sharps caſe.

¶ Item ſi vn hõe fait vn fait de Feoffement a vn auter de certaine terre, & deliuer a luy le fait, mes nemy liuerie de Seiſin, en ceo caſe, celuy a que le fait eſt fait, poit enter en le Terre, & tener & occupier a la volunt celuy que fiſt

ALſo if a man make a deed of Feoffement to another, of certaine lands, and deliuereth to him the Deed, but not liuery of ſeiſin; in this caſe he to whom the Deed is made, may enter into the Land, and hold and occupy it at the will of him which

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le fait, pur ceo que il eſt proue per les parols del fait, que il eſt la volunt que le auter auera la terre, mes celuy que fiſt le Fayt luy poet ouſte quaunt luy pleiſt.

made the Deed, becauſe it is proued by the words of the deed that it is his will that the other ſhould haue the land, but he which made the Deed may put him out when it pleaſeth him.

ſi donatio lecta fuerit & conceſſa, ac traditio nondum fuerit ſubſecuta. But if the deed be deliuered in name of ſeiſin of the Land, or if the Feoffor ſaith to the Feoffee, Take and enioy this Land, according to the Deed, or enter into this Land, and God giue you ioy: theſe words doe amount to a liuery of ſeiſin.

Sect. 71.

¶ Item ſi vn meſe ſoit leſſe a tener a volunt, le leſſee neſt pas tenus a ſuſteiner ou repairer le Meaſon, ſicome Tenant a terme dans eſt tenus. Mes ſi le Leſſee a volunt fait voluntarie Waſt, ſicome en abatement des meaſons, ou en couper des arbres, il eſt dit que le Leſſor auera de ceo enūs luy action de treſpaſſe. Sicome ieo bayle a vn hōe mes barbits a cōpeſter ſ ſ, ou mes boefes a aret la terr, & il occiſt mes auers, ieo puiſſoy bñ aſi vn acē ō trñs enūs luy nient obſtant l bailement.

Alſo if a houſe be leaſed to hold at will, the Leſſee is not bound to ſuſtaine or repaire the houſe, as Tenant for terme of yeeres is tied. But if Tenant at will commit voluntarie waſte, as in pulling downe of houſes, or in felling of trees, it is ſaid that the Leſſor ſhall haue an action of Treſpaſſe for this, againſt the Leſſee. As if I lend to one my Sheepe, to tathe his Land, or my Oxen to plow the Land, and hee killeth my Cattell, I may well haue an action of Treſpaſſe againſt him, notwithſtanding the lending.

¶ *Si vn meſe ſoit leſſe a tener a volunt le leſſee neſt paſſe tenus, &c.* For the Statute of Glouceſter abone mentioned extends not to a Tenant at will, and therefore for permiſſiue waſte, the Leſſor hath no remedy at all.

¶ *Mes ſi Leſſee a volunt fait voluntary waſt, &c.* (g) And true it is, that if Tenant at will cutteth downe timber trees, or voluntarily pull downe and proſtrate houſes, the Leſſor ſhall haue an action of Treſpaſſe againſt him, quare vi & armis, for the taking vpon him power to cut timber, or proſtrate houſes, concerneth ſo much the freehold and inheritance as it doth amount in Law to a determination of his will, (h) and ſo hath it beene adiudged.

(g) 11.H.6.38. 28.E.3.25. 12.H.4.3. 22.E.4.36.

(h) Mich. 28. & 29. Eliz. Rot. 318. in Com. Banc. inter Walgraue & Somerſet. V. le Counts de Shrewsburies caſe, li. 5. fo. 13.

(i) If Tenant at will granteth ouer his eſtate to another, and the Grantee entreth, he is a Diſſeiſor, and the Leſſor may haue an action of Treſpaſſe againſt the Grantee, for albeit the Grant was void, yet it amounteth to a determination of his will.

(i) 27.H.6.3. 22.E.4.5.

¶ *Sicome ieo baile a vn home mes barbits a compeſter ſon terre, &c.* And the reaſon is, (k) that when the Bailee hauing but a bare vſe of them, taketh vpon him as an owner, to kill them, hee loſeth the benefit of the vſe of them. Or in theſe Caſes he may haue an action of Treſpaſſe ſur le caſe, for this conuerſion, at his election.

(k) V. 11.H.4.24. 1.E.4.9.b 12.E.4.8. 21.E.4.19.& 76. 22.E.4.5. 3.H.7.4. 21.H.7.14. Flet. li. 2. ca. 1.

¶ *Treſpaſſe.* Trangreſſio deriuatur à tranſgrediendo, becauſe it paſſeth that which is right: Tranſgreſſio autem eſt cum modus non ſeruatur, nec menſura: debet enim quilibet in ſuo facto modum habere, & menſuram: Note, In the loweſt and the higheſt offences there are no acceſſaries, but all are principals, as in riots, routs, forcible entries, and other tranſgreſ-

Ino 53

sions vi & armis, which are the lowest offences; and so in the highest offence which is crimen lesæ maiestatis, there bee no accessaries: but in felonies there bee accessaries both before and after.

Sect. 72.

21 H.7.39.b. 2.E.4.6.b. 7.E.1. 27.a. 6.R.2. Avowrie 86.

CIL poet distreyner pur le rent arere ou auer de ceo vn action de debt, &c. But if he impound the distresse vpon the ground letten at Will, the Will is determined. Note, he may distreine for the Rent, and yet it is no Rent service, for no fealty belongeth thereunto, but a Rent distreinable of common right.

CNota si le lessor sur tiel lease a volunt reserue a luy vn annuall rent, il poit Distrainer pur le rent arere, ou auer de ceo vn action d debt a son election.

NOte, if the Lessor vpon a Lease at will, reserue to him a yeerely rent, hee may distreine for the Rent behinde, or haue for this an action of debt at his owne election.

(l) Bracton lib.4. fol.318. 4.E.3.39. 7.E.3.13. 24.E.3.24. 38.E.3.28. 7.R.2.Iauour deff.30. 8.E.4.25. 4.H.6.30. 22.E.4.38. 18.E.4.25. F.N.B.201. D.203. 8.E.2.entre 87. Temps H.8.b.15. tit. tenant a volunt. Pl.com.138. 4.H.7.3. (m) 13.H.7.10.2. 21.H.6.54. 5 E.4.3. 22.R.2.tit.Discont. 48.E.3.23.pl.com.435. 19.E.3.bre.468. 15.E.4.Discont.30. 6.E.3.55.57. 21.E.4.5. 21.H.7.38. 10.E.4.18. Per Choke & Litt. (n) Statute de Merlbridge cap.26. Abb Asi.120.b. F.N.B.196. 11.E.4.10. & 11. Bract.lib.4.fo.252.253.

There is a great diuersity betweene a tenant at will, & a tenant at sufferance; for tenant at will is alwayes by right, and tenant at sufferance entreth by a lawfull lease, and holdeth ouer by wrong. A tenant at sufferance is he that at the first came in by lawfull demise, and after his estate ended continueth the possession and wrongfully holdeth ouer. (l) As tenant pur terme dauter vie, continueth in possession after the decease of Ce' que vie, or tenant for yeeres holdeth ouer his terme, the lessor cannot haue an action of trespasse before entrie. Now that a writ of entrie ad terminum qui præteriit lyeth against such a tenant as holdeth ouer, is rather by admission of the demandant, than for any estate of freehold that is in him, for in iudgement of law he hath but a bare possession, but against the King there is no tenant at sufferance, but he that holdeth ouer in the cases aboue said is an intruder vpon the King, because there is no laches imputed to the King for not entring. (m) If tenant in taile of a rent grant the same in fee & dieth, yet the issue in taile may bring a Formedon, & admit himselfe out of possession. The like Law is it if a man maketh a lease at will and dieth, now is the will determined, and if the lessee continueth in possession he is tenant at sufferance, and yet the heire by admission may haue an assise of Mordanc' against him. (n) But there is a diuersity betweene particular estates made by the tertenaunt, as aboue is said, and particular estates created by act in law: as if a gardian after the full age of the heire, continueth in possession, he is no tenant at sufferance, but an Abator, against whom an Assize of Mordancester doth lye. Et sic de similibus.

Chap. 9. Sect. 73.

Tenant by Copie.

TEnant per copie, &c. Tenens per copiam rot. Cur'. Copie wee call in Latine copiam, though copia in his proper significatiõ signifieth plenty, but wee haue made a Latine word of the French word Copie, and this is ancient, for in the Register fol. 51. there is a Writ de copia libelli deliberanda, which is grounded vpon the statute of 2.H.4.ca. There is no tenant in the law,

TEnant p copie de court rol est, deins quel manor il y ad vn custome que ad este vse de temps dont memorie ne court, que certaine tenants deins mesm̃ le Manor, ont vse dauer terres & tenements, a

TEnant by copy of Court Roll is, as if a man be seised of a manor, within which manor there is a custome, which hath beene vsed time out of minde of man, that certaine Tenants within the same manor haue vsed to haue lands and te-

tener

tener a cux & la lour heires en fee ſimple, ou en fee taile, ou a terme de vie, &c. a volunt le Seignior ſolonque le cuſtome de meſme le manor.

nements to hold to them and their heires in fee ſimple, or fee taile, or for terme of life, &c. at the will of the Lord according to the cuſtome of the ſame manor.

that holdeth by copy but only this kind of cuſtomary tenāt, for no man holdeth by Copy of a Charter, or by copy of a fine, or ſuch like, but this tenāt holdeth by copy of court roll.

(a) Bracton calleth Copiholders Villanos Sockmannos, not becauſe they were bond, but becauſe they held by baſe tenure by doing of villein ſervices.

(a) Bracton. lib. 2. cap. 8. fol. 26. & lib. 4. fo. 209. Britton. 165. Fleta lib. 1. c. 2. & lib. 2. cap. 6. Item de cuſtumariis. Ock. in Cap. quid murdrum. F. N. B. f. 12. c.

And Britton ſaith that ſome that be free of blood doe hold land in Villenage, and Littleton himſelfe in the next chapter calleth them tenants by baſe tenure: and in F. N. B. fol. 12 C. Et ceſt terme que eſt ore a ceſt jour appel copitenaunts ou copiholders, ou tenaunts per copie, eſt forſque vn novel noſme trove, car dancient temps ils fuer' appelles tenants in Villenage, ou de baſe tenure, &c. (b) And yet in 1. H. 5. 11. they be called Copiholders, in 14. H. 4. 34. tenant per le verge. in 42 E. 3. 25. Tenant per Roll ſolonque le volunt le ſeignior; and in the ſtatute of 4. E. 1. called extenta manerii, they are called Cuſtumarii tenentes, and ſo doth Fleta call them, And before him Ockam (who wrote in the reigne of H. 2.) ſpake of them, and how, and upon what occaſion they had their beginning.

Iust. 81.

(b) 1. H. 5. 11. 14. H. 4. 34. 42. E. 3. 25. Vid. lib. 4. fol. 2. Brownes caſe.

(c) Terra ex ſcripto Saxonice Bockland, fundum veteres aut ex ſcripto qui Bockland. i. bookland, aut ſine ſcripto qui Folkland dicebatur, poſſidebant, quæ fuit ex ſcripto poſſeſſio commodiore erat poſſeſſione libera, atque immunis, fundus ſine ſcripto cenſum penſitabant annuum, atque officiorum ſeruitute quadam eſt obligatus, priorem viri plerunque nobiles, atque ingenui, poſteriorem ruſtici fere & pagani poſſidebant.

(c) Lamb. verb. terra ex ſcripto.

¶ *Court.* Curia, Court is a place where Juſtice is judicially miniſtred, and is derived à cura, quia in curiis publicis curas gerebant. (d) The Court Baron muſt be holden on ſome part of that which is within the Manor, for if it be holden out of the Manor it is void, vnleſſe a Lord being ſeiſed of two or three Manors hath vſually time out of minde kept at one of his Manors Courts for all the ſaid Manors, then by cuſtome ſuch Courts are ſufficient in Law, albeit they be not holden within the ſeverall Manors. And it is to be vnderſtood that this Court is of two natures, the firſt is by the Common Law, and is called a Court baron, as ſome haue ſaid, for that it is the freeholders or freemans Court, (for barons in one ſenſe ſignifie freemen) and of that Court the freeholders being ſuitors be Judges, and this may be kept from three weekes to three weekes. The ſecond is a cuſtomary Court, and that doth concerne Copiholders, and therein the Lord or his Steward is the Judge. Now as there can be no Court baron without freeholders, ſo there cannot bee this kinde of cuſtomary Court without Copiholders or Cuſtomary holders. And as there may be a Court baron of Freeholders only without Copiholders, and then is the Steward the Regiſter, ſo there may be a cuſtomary Court of Copiholders only without Freeholders, and then is the Lord or his Steward the Judge. And when the Court baron is of this double nature, the Court Roll containeth as well matters appertaining to the cuſtomary Court, as to the Court baron.

(d) Vid. 4. fol. 24. inter Murrell & Smith eodem lib. fol. 27. inter Cliſton & Molineux.

Lib. 4. f. 26. Melwiches caſe. Britton fol. 274.

And for as much as the title, or eſtate of the Copiholder is entred into the Roll whereof the Steward deliuereth him a copy, thereof he is called Copiholder. (e) It is called a Court baron, becauſe amongſt the lawes of King Edw. the Confeſſor it is ſaid: Barones vero qui ſuam habent curiam de ſuis hominibus, &c. taking his name of the Baron who was Lord of the Manor, or for that properly in the eye of Law it hath relation to the Freeholders, (f) who are Judges of the Court. And in ancient Charters and Records the Barons of London, and Barons of the Cinque ports doe ſignifie the Freemen of London, and of the Cinque ports.

(e) Lamb. fol. 128. & 136. Cambden. Brit. fo. 121. b. Britton. fol. 274.

(f) Mirror cap. 1. ſect. 3.

See Rolls upon Sadmans 168. 169

¶ *Seiſie dun mannor.* Manerium dicitur à manendo ſecundum excellentiam ſedes magna fixa & ſtabilis. Lageman. i. habens ſocam & ſacam ſuper homines ſuos, &c. (g) Et ſciendum eſt quod manerium poterit eſſe per ſe ex pluribus edificiis coadjuuatum ſiue villis & hamletis adjacentibus. Poterit etiam eſſe manerium & per ſe & cum pluribus villis, & cum pluribus Hamlettis adiacentibus, quorum nullum dici poterit manerium per ſe ſed villæ ſuæ hamlettæ, poterit etiam eſſe per ſe manerium capitale, & plura continere ſub ſe maneria non capitalia, & plures villas & plures Hamlettas quaſi ſub vno capite aut dominio vno. And afterwards, Manerium autem fieri poterit ex pluribus villis vel vna, plures enim villæ poterunt eſſe in corpore manerii ſicut & vna. And in theſe (h) ancient Authors you ſhall ſee the difference, inter manſionem, villam, & manerium. Concerning the inſtitution of this Court by the Lawes and Ordinances of ancient Kings, and eſpecially of King Alfred, it appeareth that

Domeſday.

(g) Bracton lib. 4. fo. 212. Fleta lib. 4. c. 15. & lib. 6. cap. 49. Britton. fol. 124.

(h) Bract. lib. 5. fo. 434. Fleta vbi ſupra. Mirror. cap. 1. ſect. 3.

that the first Kings of this Realme had all the lands of England in Demeane, and le grand Manors & Royaltie, they reserued to themselues, and of the remnant they, for the defence of the Realme, enfeoffed the Barons of the Realme with such iurisdiction as the Court Baron now hath, and instituted the Freeholders to be Judges of the Court Baron. And herewith agreed the aforesaid Law of Saint Edward. And it is to bee obserued, that in those ancient Lawes vnder the name of Barons were comprised all the Nobility.

8 A. 63 2 Cro 99 Rep. 11. fol: 17. Sir H. Neuils case. A hon. L. &c. cant grant vpon ... Farmer a Copihold for long ... by his own ... Copihold ... of Inheritance by Custom. Sat ... Thorpe 50.

There may bee a customary Manor granted by Copy of Court Roll, so although the word be (seisie) which properly betokeneth a Freehold, yet tenant for peares, tenant by statute Merchant, Staple, Elegit, and tenant at Will, gardian in Chiualry, &c. who are not properly seised but possessed, are Domini pro tempore, not only to make admittance, but to grant voluntary Copies of ancient Copihold lands which come into their hands. And therefore there is a diuersity betweene Disseisors, Abators, Intruders, and others that haue defeasible Titles, for their voluntary grants of ancient Copihold lands, shall not binde the Disseisee or others that right haue. And voluntary grants by Copy, made by such particular Tenants as is aforesaid, shall binde him that hath the Freehold and Inheritance, because all these be lawfull Lords for the time being, but so is not a tenant at sufferance, because he is in by wrong as hath beene said, and so (i) was it adiudged P. 29. Eliz. inter Rowse & Arteis lib. 4. fol. 24. But admittances made by Disseisors, Abators, Intruders, Tenant at sufferance or others that haue defeasible Titles, stand good against them that right haue because it was a lawfull act, and they were compellable to doe them.

57. b. 2 (i) Lib. 4. fo. 24. p. 29. Eliz. inter Rous & Arteis. ... may ... Lords ... land ... of Inheritance Cathorpe 49

(k) And yet in some speciall case an Estate may be granted by copy, by one that is not Dominus pro tempore, nor that hath any thing in the Manor. As if the Lord of a Manor by his Will in writing, deuiseth that his Executor shall grant the customary tenements of the manor according to the custome of the manor for the payment of his debts, and dieth, the Executor hauing nothing in the manor, may make grants according to the custome of the manor.

(k) Dier. Mich. 7. & 8. Eliz. Manuscript.

¶ *Deins quel mannor il y ad vn Custome que ad este vse de temps dont memory ne court, &c.* Of this custome here spoken of there be three supporters. The first is time, and that must bee out of memory of man, which is included within this word (custome) so as Copihold cannot begin at this day. (l) The second supporter is that the Tenements be parcell of the Manor or within the Manor, which appeare by these words of Littleton, que certeine tenants deins mesme le mannor, &c. The third supporter is that it hath beene demised and demisible by copy of Court Roll, for it need not to be demised time out of minde by copy of Court; but if it be demisible it is sufficient. For example: If a Copihold tenement escheat to the Lord, and the Lord keepeth it in his hands by many peares, during this time it is not demised but demisible, for the Lord hath power to demise it againe.

(l) Vide lib. 4. fo. 24. inter Murrell & Smith.

¶ *A volunt le seigniour solonque le custome.* So as he is not a bare tenant at will, but a tenant at will according to the custome of the Manor, as shall bee spoken more hereafter in this chapter. *v. sect. 77. & Coles de illa.*

Lib. 11. 17. Sir H. Neuils Case. Lib. 4. fo. 30. 31. inter Hoe & Tayler.

¶ *Certaine tenements.* What things may be granted by copy, is necessary to be knowne: First, a Manor may be granted by copy. Secondly, vnderwoods without the soile may be granted by copy to one and to his heires, and so may the herbage or vesture of land. Thirdly, generally all lands and tenements within the Manor and whatsoeuer concerneth lands or tenements may be granted by copy: as a faire appendant to a Manor may be granted by copy, &c.

¶ *Consuetudines.* This word Consuetudo being deriued à consueto, properly signifieth a Custome, as here Littleton taketh it: But in legall vnderstanding it signifieth also Tolles, Murage, Pomage, Pauiage, & such like newly granted by the King; and therefore when the King grants such things, the words be, Concessimus, &c. in auxilium villæ prædict' pauiand', &c. consuetudines subscriptas, viz. de quolibet summagio, &c.

Regist. Fit. N. B. 270. d. V. mag. Carta in cap. Itin. fol. 151. Bract. lib. 3. 117. Flet. lib. 1. cap. 20.

And it was an Article of the Justices in Eire to inquire, De novis consuetudinibus leuatis in regno, siue in terra, siue in aqua, & quis eas leuauit & vbi. Where consuetudo is taken for Tolles and such like Taxes or Charges vpon the subiect.

Sect. 74.

¶ *Et tiel tenant ne puit aliener sa terre, &c.* And this is

¶ Et tiel tenant ne puit alien sa terre per fait, car

And such a tenant may not alien his land by deed, for then

don-

donques le Seignior poit entre come en chose forfeit a luy, mes sil voit alien sa terre a vn auter, il covient solonque ascum custome de surrender les tenemēts en ascun Court, &c. en le maine le Seignior, al vse celuy que auera le state, en tiel form, ou a tiel effect.

Ad hanc Curiam venit *A.* de *B.* & sursum reddidit in eadem Curia, unum mesuagium, &c. in manus Domini, ad vsum *C.* de *D.* & hæredum suorum, vel hæredum de corpore suo exeuntiū, vel pro termino vitæ suæ, &c. Et super hoc venit prædictus *C.* de *D.* & cœpit de Domino in eadem Curia, mesuagium prædictū, &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ, &c. ad voluntatem domini, secundum consuetudinem manerii, faciendo & reddendo inde redditus, seruitia, & consuetudines inde, prius debita & consueta, &c. Et dat Domino pro fine, &c. Et fecit Domino fidelitatem, &c.

the Lord may enter as into a thing forfeited vnto him. But if hee will alien his Land to another, it behoueth him after the custome to surrender the tenements in Court, &c. into the hands of the Lord to the vse of him that shall haue the Estate, in this forme or to this effect.

A. of *B.* commeth unto this Court, and surrēdreth in the same Court a Mease, &c. into the hands of the Lord, to the use of *C.* of *D.* and his heires, or the heires issuing of his body, or for terme of life, &c. And vpon that, commeth the aforesaid *C.* of *D.* and taketh of the Lord in the same Court, the foresaid mease, &c. To have and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lords will, after the custome of the manor, to do and yeeld therefore the Rents, Services, and Customes thereof before due and accustomed, &c. and giveth the Lord for a fine, &c. and maketh vnto the Lord his fealty, &c.

true in Case of alienation, but when a man hath but a right to a Copihold, he may release it by deed or by Copy, to one that is admitted Tenant de facto.

Lib. intrat. 131. Lib. 4. fol. 25. b. inter Kite & Queinton.

¶ *Alien per fait.* Here it appeareth by Littleton that there must be an alienation: for the making of the deed alone, vnlesse somewhat passe thereby is no forfeiture: as if he make a charter of feoffement, or a deed of demise for life, and make no liuery, this is no forfeiture, because nothing passeth, & therefore no alienation, but otherwise it is of a lease for yeeres.

¶ *Forfeit a luy.* This Adiective in Latine is forisfactus, the Verbe is forisfacere, and the Nowne forisfactura, they are all derived of foris (that is) extra, and facere, quasi diceret, extra legem seu consuetudinem facere, to do a thing against or without Law or custome, and that legally is called a forfeiture. Littleton useth this word but once in all his booke. What shall be said (k) forfeitures of Copiholds you may read at large in my Reports.

(k) Lib. 4. inter les Copihold cases 21. 23. 25. 27. 28. Lib. 8 92. 99. 100. Lib. 9. 75. 107. Lib. 10. 131.

¶ *En ascun Court.* (1) This is the generall custome of the Realme, that euery Copiholder may surrender in Court and need not to alleage any custome therefore. So if out of Court he surrender to the Lord himselfe, hee need not alleage in pleading any custome, but if he surrender out of court into the hands of the Lord by the hands of two or three, &c. Copiholders, or by the hands of the Bayliffe or Reeue, &c. or out of Court by the hand of any other, these customes are particular, and therefore he must plead them.

(l) Bract. lib. 2. cap. 8. & lib. 4. 249. 25. H. 4. 34. 1. H. 5. 11.

+ in person or by Letter of Attorney or commission having a customary estate of inheritance. Rep. 9. fo. 76

(m) Bracton. lib. 4. fol. 209. speaking of these kind of customary Tenants, saith, Dare autem non possunt tenementa sua, nec ex causa donationis ad alios transferre non magis quam villani puri, & vnde si transferre debeant restituunt

(m) Brac. lib. 4. fol. 209. & lib. 2. cap. 8. nu. 14. H. 4. 34.

ea Domino vel Baliuo, & ipsi ea tradant aliis in villenagium tenenda, but although it be incident to the estate of a Copihold, to passe as our Author saith by surrenders, (b) yet so forcible is custome, that by it a Freehold and Inheritance, may also passe by surrender (without the leaue of the Lord) in his Court, and deliuered ouer by the Baily to the tenãt, according to the forme of the Deed, to be inrolled in the court of the like.

(b) Coram rege Mich. 31. E. 3. Randulph Huntingfelds case. 3. E. 3. Corona 310. 11. H. 4. 83. per Thorning.

¶ *Ad hanc curiam venit* A *de* B *& sursum reddidit, &c.* Here Littleton putteth an example of a surrender in Court, and in this example three (c) things are to be obserued.

(c) Vide lib. 4. inter les cases de Copiholds.

First, that the surrender to the Lord be generall without expressing of any Estate, for that he is but an instrument to admit Cesty a que use, for no more passeth to the Lord, but to serue the limitation of the vse, and Ce' que vse, when he is admitted, shall be in by him that made the surrender, and not by the Lord.

Secondly, if the limitation of the use be generall, then Ce' que vse taketh but an estate for life, and therefore here Littleton expresseth vpon the declaration of the vse, the limitation of the Estate, viz. in fee simple, fee taile, &c.

(d) Mich. 2. & 3. Ph. & M. in Com. Banco, by the whole Court in Constables case of Pickenham in Norfolke.

Thirdly, The Lord cannot grant a larger Estate than is expressed in the limitation of the vse. Littleton here putteth his case of one. If two tenants be of copihold lands in fee, and the one out of court according to the custome surrender his part to the Lords hands, to the vse of his last Will, and by his Will deuiseth his part to a stranger in fee, and dieth, and at the next Court the surrender is presented, by the surrender and presentment the tenure was seuered, and the deuisee ought to be admitted to the moity of the lands, for now by relation, the state of the land was bound by the surrender.

(e) Fleta lib. 2. c. 65. & 71.

¶ *In manus Domini.* Dominus manerii. The Lord of a Manor is described (e) by Fleta as hee ought to be, in these words. In omnibus autem & supra omnia decet quemlibet Dominum verbis esse veracem, & in operibus fidelem, Deum & Iustitiam amantem, fraudem & peccatum odientem, voluntariosque, maleuolos, & iniuriosos contemnentem, & apud proximos pietatem vultumque mobilem & plenum, ipsius enim interest potius consilio quam viribus vti, proprioue arbitrio: non cuiuslibet voluntarii iuuenis menestralli, vel adulatoris, sed iurisperitorum virorum fidelium & honestorum, & in pluribus expertorum consilio debet fauere. Qui bene sibi vult disponere & familiæ suæ, scire veram executionem terrarum suarum necessarium erit, vt perinde sciat quantitatem suarum facultatum & finem annuarum expensarum. And the residue is fit for euery Lord of a Manor to know and follow, which were too long here to be recited, only his conclusion hauing spoken of the Lords reuenue and expences I will adde, Quæ omnia distincte scribantur in membranis, vt perinde sagacius vitam suam disponat & facilius conuincat mendacia compostatiorum.

(f) See more of this lib. 4. the cases of copiholds. Trin. 1. Ia. Rot. 854. inter Shapland & Rudler in repl. in Com. Banco. the case of the Gardian in Soccage adiudged.

(f) If the Lord of the Manor for the time being be Lessee for life or for yeeres, gardian, or any that hath any particular interest, or tenant at will of a Manor (all which are accounted in law Domini pro tempore) doe take a surrender into his hands, and before admittance the Lessee for life dieth, or the yeeres interest or custody doe end or determine, or the will is determined, though the Lord commeth in aboue the Lease for life or for yeeres, the custody or other particular interest or tenancy at will, yet shall hee be compelled to make admittance according to the surrender, and so was it holden in 17. Eliz. in the Earle of Arundels Case, which I my selfe heard.

¶ *Et dat Domino de fine.* For the signification of this word (finis) Vide Sect. 174. 183. 194. 441.

Of fines due to the Lord by the Copiholder, some bee by the change or alteration of the Lord, and some by the change or alteration of the tenant, the change of the Lord ought to be by Act of God, otherwise no fine can be due, but by the change of the tenant either by the Act of God, or by the Act of the party, a fine may be due: for if the Lord doe alleage a custome within his Manor to haue a fine of euery of his Copiholders of the said Manor at the alteration or change of the Lord of the Manor, bee it by alienation, demise, death, or otherwise; This is a custome against the Law, as to the alteration or change of the Lord by the act of the party, for by that meanes the Copiholders may be oppressed by multitude of fines, by the act of the Lord. But when the change groweth by the act of God, there the custome is good as by the death of the Lord. And this, vpon a Case in the Chancery (g) referred to Sir Iohn Popham Chiefe Iustice, and vpon conference with Anderson, Periam, Walmesley, and all the Iudges of Seriants Inne in Fleetstreet was resolued, and so certified into the Chancery. But vpon the change or alteration of the tenant, a fine is due vnto the Lord.

v. 5. fo. 400. a

(g) T. 39. Eliz. betweene the Copiholders of the Manor of Guilsrus, in the County of Northumberland and Armestrong, Lord of the Manor, in Chancerie.

Of fines taken of Copiholders some be certaine by custome, and some be incertaine, but that fine though it be incertus, yet must it be rationabilis. And that reasonableneese shall be discussed by the Iustices vpon the true circumstances of the Case appearing vnto them, and if the Court where the cause dependeth, adiudgeth the fine exacted vnreasonable, then is not the

Copi-

Copyholder compellable to pay it. And so was it adiudged: (h) for all excellinenelle is abhorred in Law. See more concerning fines of Copyholders in my Repoꝛts (i) which are so plainly there set downe, as they need not be rehearsed here.

(h) Pasch. 8. Iac. in Com. Banco Rot. 1845. inter Stallon & Brady.
(i) Lib. 4. the cases of Copyholds.

Sect. 75.

ET tiels tenãts sont appelles Tenants per Copie de Court Rolle, pur ceo que ils nont auter euidence concernant lour tenements, forsque les Copies des Rolles de Court.

And these tenants are called tenants by Copie of Court Roll, because they haue no other euidence concerning their tenements, but onely the Copies of Court Rolls.

¶ *Ils nont auter euidence.* This is to be vnderstood of euidences of alienation for a release of a right by Deed a Copyholder (that commeth in by way of admittance) may haue, and that is sufficient to extinguish the right of the Copyhold which hee that maketh the release had.

+ v. Rep. 4. inter Copyhold cases & case de Litt & Lewinton fo: 25

Sect. 76.

ET tiels tenãts ne emplederõt, ne serront empledes de lour tenements p̃ vniese le Roy. Mes ils voilent empleder auters pur lour tenements, ils aueront vn plaint fait en le Court le Seignior en tiel forme, ou a tiel effect: A. de B. queritur versus C. de D. de placito terræ, videlicet, de vno messuagio, quadraginta acris terr', quatuor acris prati, &c. cum pertin'. & facit protestationẽ sequi querulam istam in natura breuis domini Regis assisæ mortis anteceſſoris ad communẽ legẽ, vel breuis domini Regis assisæ Nouæ disseisinæ ad communẽ legẽ, aut in natura breuis de for-

And such tenants shall neither implead nor bee impleaded for their Tenements by the Kings Writ, but if they will implead others for their Tenements, they shall haue a plaint entred in the Lords Court in this forme, or to this effect: A. of B. complaines against C. of D. of a plea of land, viz. of one messuage, fortie acres of land, foure acres of meadow, &c. with the appurtenances, and makes protestation to follow this complaint in the nature of the Kings writ of assise of Mordanceſter at the Common Law, or of an assise of Nouel Disseisin, or Formedon in the discender at the

¶ *Iels tenants ne emplederont, ne serront empledes, &c.* This is euident, and needs no explanation.

4. H. 4. 34. adiudged in Parliament.

¶ *Mes sils voilent empleder auters, ils aueront, &c.* But the case that the Demandant in a plaint in nature of a reall action recouereth the land erroneously, what remedy for the partie grieued? For hee cannot haue the Kings writ of false iudgement in respect of the baseneſſe of the estate and tenure, being in the eye of the Law but a Tenant at will, and the Freehold being in another, he shall haue a petition to the Lord in the nature of a Writ of false iudgement, and therein assigne errors, and haue remedy according to Law.

14. H. 4. 34. 8. H. 5. 12. Vet. N. B. 18. 13. R. 2. tit. Faux iudgement, 7. E. 4. 19. 21. E. 4. 80.

Rep. 4. Shaw & Thomp fo: 30

¶ *De forma donationis in discender ad communem legem.* By the opinion of Littleton as there may be an estate taile by custome with the co-operation of the Statute of W. 2. cap. 1. so may he haue a Formedon in discender, but as the Stat. without a custome extendeth not to Copyholds, so a custome

Lib. 3. fo. 8, 9. in Heydons case. Lib. 4. fo. 21, 23. 15. H. 8. Br. tit. taile.

ſtome without the Statute cannot create an Eſtate taile. Now it is not a ſufficient proofe that lands haue beene granted in taile, for albeit lands haue anciently and vſually beene granted by Copie to many men and to the heires of their bodies, that may be a Fee ſimple conditionall as it was at the Common Law. But if a remainder haue beene limited ouer ſuch eſtates and entoyed, or if the iſſues in taile haue auoided the alienation of the Anceſtor, or if they haue recouered the ſame in Writs of Formedon in the Diſcender, theſe and ſuch like be proofes of an Eſtate taile. (y) But if by cuſtome, Copyhold may bee intailed, the ſame by like cuſtome, by Surrender may be cut off, and ſo hath it beene adiudged, (z) ſome haue holden that there was a Formedon in the Diſcender at the Common Law.

(y) P.29.Eliz. inter Hill & Vpcheic. Cuſtome deins le manor de Ouerhall in Eſſex.
21. Eliz. Dier 366.
23. Eliz. Dier 373.
(z) 10.E.2. Formdon 55.
21.E.3.47. Pl.Com.240.
4.E.2.Formdon 50.

Sect. 77.

¶ CAr (il eſt dit) *que ſi le Seignior, &c.* And here Littleton ſaith truly that it is ſaid ſo, for ſo it is ſaid in 13.E.3.13.R.2. 32.H.6. & 7.E.4.19.

13.E.3.tit.preſcript.20.
13.R.2. feiux indgement.
7. 32.H.6. tit.Subpena 2.
7.E.4.19.

But hee ſetteth not down his owne opinion, but rather to the contrarie, as hereafter in this chapter appeareth. But now Magiſtra rerum Experientia, hath made this cleare and without queſtion, that the Lord cannot at his pleaſure put out the lawfull Copyholder without ſome cauſe of forfeiture, and if he do, the Copyholder, may haue an action of treſpaſſe againſt him, for albeit hee is tenens ad voluntatem Domini, yet it is ſecundum conſuetudinem Manerii.

Vide Sect.81.82.84.132.

(b) And Britton ſpeaking of theſe kinde of Tenants ſaith thus, Et ceux ſont priuiledges en ciel maner que nul de les doit ouſter de

(b) Vid.42.E.3.25.
Britt.fol.165.

¶ ET coment que aſcun tiels tenants ont inheritance ſolonque le cuſtome del Manor, vnc̄ ils nont eſtate forſque a volunt le Seignior ſolonque le courſe del common Ley. Car il eſt dit, ſi le Seignior eux ouſta, ils nont auter remedy forſque de ſuer a lour Seigniors per petition, car ſils aueront auter remedy, ils ne ſerront dits Tenants a volunt le Seignior ſolongz le cuſtome del Manor, mes le Seignior ne voile enfreinder le cuſtome q̄ eſt reaſonable en tiels caſes.

¶ Mes Brian Chiefe Juſtice dit, que ſon opinion ad touts foits eſte, & vnquez ſerr̄, ſi tiel teñt per le cuſtome payant ſes ſeruices ſoit eiect per le Seignior, que il auera action de trēs vers luy, H.21.Ed.4. Et iſſint fuit lopinion de Danby chiefe Juſtice, M. 7. Ed. 4.

AND although that ſome ſuch Tenants haue an inheritance according to the cuſtome of the Manor, yet they haue but an Eſtate but at the will of the Lord according to the courſe of the cōmon law. For it is ſaid, that if the Lord doe ouſt them, they haue no other remedy but to ſue to their Lords by petition, for if they ſhould haue any other remedy, they ſhould not be ſaid to be Tenants at will of the Lord according to the cuſtome of the Manor. But the Lord cannot breake the cuſtome which is reaſonable in theſe caſes.

¶ But *Brian* chiefe Iuſtice ſaid, that his opinion hath alwaies been & euer ſhall be, that if ſuch tenant by cuſtome paying his ſeruices bee ejected by the lord, he ſhal haue an actiō of treſpaſs againſt him. *H.21.Ed.4.* And ſo was the opiniō of *Danby* chiefe Iu-

¶ Car

Car il dit que le tenãt per le custome est cibien enheriter de auer son terre solonque le custome, come cestuy que ad franktenement al Common Ley.

stice in 7. Ed. 4. For he saith that Tenant by the custome is as well inheritour to haue his land according to the custome as hee which hath a Freehold at the Common Law,

tiels tenements, sans come ils sont les services que a lour tenements appendent, ne nul ne poet lour services accresire ne charge a faire autres services ou plus. And herewith agreeth Sir Robert Danby, chiefe Justice of the Court of Common Pleas, M. 7. E. 4. 19. and Sir Thomas Brian his successor, M. 21. E. 4. 80. viz. that the Copyholder doing his customes and services, if he be put out by his Lord, he shall haue an action of trespasse against him. v. Cokes case of Copyholds Rep. 4. fo: 24

Chap. 10. Sect. 78.

Tenant per le Verge.

Tenãts p le Verge, sont en tiel nature come tenants p le copy de Court roll. Mes la cause p̃ q̃ ils sont appelles tenants p la Verge, est p̃ ceo q̃ quant ils voilent surrender lour tenemẽts en le main lour Seignior al vse dun auter, ils aueront vn petite Verge (per le custom) en lour main, le quel ils bailera al Seneschall, ou al Bailife solonque le custome & vse del Manor, & celuy que auera la terre, prendra mesme la terre en le Court, & son priuel serra enter en le roll, & le Seneschal, ou le bailife, solonqz le custome deliuera a ce-

Tenãt by the Verge are in the same nature as Tenants by copy of Court roll. But the reason why they be called tenants by the Verge is, for that when they will surrender their Tenements into the hands of their Lord to the vse of another, they shall haue a little rod (by the custome) in their hand, the which they shall deliuer to the Steward, or to the Bailife according to the custome of the Manor, and he which shal haue the land shal take up the same land in Court, and his taking shall bee entred vpon the roll, and the steward or bailife, according to the custom

Tenants per le Verge.

This Tenant per le Verge is a meere Copyholder and taketh his name of the ceremony of the Verge. Tenure in Villenage, or by base tenure is thus described by Britton, (a) Villenage est, tenãde demeins de thesenn sur bailles a tenera son volunt per Villeines seruices de enprouer al oppes le Seignior, & huere p verge & nient per title de estrit, ne per succession de heritage dont gards de, marriages ne auters seruices reals come homage & reliefes ne ponent deb amnones & demeines ne villenage ests demand.

14. H. 4. 33.

(a) Britton fol. 165. a. F. N. B. fol. 12. Liberatio per Virgam.

A le Seneschal.

(which we call a Steward) Seneschallus is deriued of sein a house or place, and Schale an officer or gouernor, some say that sen is an ancient word for Justice, so as Seneschall should signifie officiarius justitiæ, and some say that Steward is deriued of Stewe (that is) a place, and Ward, that signifieth a keeper, Warden, or Guardian; and others that it is deriued of Stede, that signifieth a place also, and Ward as it were the keeper, or gouernor of that place; but it is a word of

v. Rep. 9. fo: 48. E. of Salop's case.

of many ſignifications. In this place it ſignifieth an officer of Iuſtice, viz. a keeper of Courts, &c. Fleta deſcribeth the office and dutie of this officer at large moſt excellently: Prouideat ſibi Dominus de Seneſchallo circumſpecto & fideli, viro prouido & diſcreto & gratioſo, humili, pudico, pacifico, & modeſto, qui in legibus conſuetudinique prouinciæ & officio ſeneſchalciæ ſe cognoſcat & jura Domini ſui in omnibus teneri affectet, quique ſubballivos Domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quique egenis parcere, & qui nec prece vel pretio velit à tramite juſticiæ deuiare, & peruerſe judicare, cujus officium eſt curias tenere maneriorum & de ſubtractionibus conſuetudinum, ſeruiciorum, reddituum, ſectarum ad cur', mercata, molendina Domini & ad viſus francpledg. aliarumque libertatum Domino pertinentium inquirat, &c. The reſidue pertaining to his office is worth your reading at large. Euerie Steward of Courts is either by Deed or without Deed, for a man may be retained a Steward to kepe his Court Baron and Leet, alſo belonging to the Manor without Deed, and that retainer ſhall continue vntill he be diſcharged. The Lord of a Manor may make admittances out of Court and out of the Manor alſo, as at large apprareth in my Reports.

Vide Sect. 91. & 379. Fleta lib. 2. cap. 66. Vide Statut. de extent. manor. 14. E. 1.

Vide lib. 4. Caſes de Copiholds. fo. 26, 27, 30.

luy que prist la terre, meſme l'verge, ou vn auter verge en noſme del ſeiſin, & pur cel cauſe ils ſont appeiles Tenants per le verge, mes ils nont auter euidence, ſinon pur copie de Court roll.

ſhall deliuer to him that taketh the land the ſame rod, or another rod in the name of ſeiſin, and for this cauſe they are called Tenants by the verge, but they haue no other euidence but by copie of Court roll.

Sect. 79.

CA *Le bailie.* This word bailie as ſome ſay commeth of the French word Baylife, in Latin Ballivus, but in truth Baily is an old Saxon word, & ſignifieth a ſafe keeper or protector, and baile or ballium is ſafe keeping or protection: And thereupon wee ſay when a man vpon ſurrettie is deliuered out of priſon traditur in ballio, he is deliuered into baile, that is, into their ſafe keeping or protection from priſon: and the ſheriffe that hath cuſtodiã comitatus, is called ballivus, and the Countie balliva ſua.

Vide Lamb. Expoſition of Saxon words.

CT *Reue*, is derined of the Saxon word gereſa or gereve; and by contraction or rather corruption Greue, or Reue, and is in Latine præfectus or præpoſitus. It ſignifieth as much as appruator a diſpoſer or director, as woodreeue, ſharpe reeue, ſhire reeue, &c. whereof more ſhall be ſaid hereafter. Vide Fleta lib. 2. cap. 67. where he treateth of the office of the Bailife, and cap. 69. de officio præpoſiti, of

Fleta lib. 2. ca. 67. & 69.

CET aury en diuers Seignories & Manors, il y ad tiel cuſtome, ſi tiel Tenant que tient per cuſtome voloit alliener ſes terres ou tenements, il poit ſurrender ſes tenements a le Bailly, ou a le Reeue, ou a deux probes homes del Seignior, al vſe ceſtuy que auera le terre, dauer en Fée ſimple, Fée taile, ou pur Terme de vie, &c. Et tout ceo ils preſenteront al procheine Court, & donqz celuy q̃ auera la fre p copy de Court Rol, auera meſme la fre ſolonqz lentent del ſurrender.

AND alſo in diuers Lordſhips and Manours there is this cuſtome, viz. if ſuch a tenant which holdeth by cuſtome will alien his lands or tenements he may ſurrẽder his tenements to the Bailife or to the Reeue, or to two honeſt men of the ſame Lordſhip to the vſe of him which ſhall haue the land to haue in fee ſimple, fee taile, or for terme of life, &c. and they ſhall preſent all this at the next court, & thẽ he which ſhall haue the land by copie of Court Roll, ſhall haue the ſame according to the intent of the ſurrender.

the office of the Reeue, and what belongeth of dutie and right to either of them, which words are too long here to be inserted, only this I will take out of him, Balivus autem cujuscunque manerii esse debet in verbo verax, & in opere diligens & fidelis, ac pro discreto appruatore cognitus plegiatus & clericus qui de communioribus legibus pro tanto officio sufficienter se cognoscat, & quod sit ita justus, quod ob vindictam seu cupiditatem non quærat versus tenentes Domini nec alios, &c. Præpositus autem tanquam appruator & cultor optimus, &c. Domino vel ejus Seneschallo palam debet presentari cui injungatur officium illud indilate, non ergo sit piger aut somnolentus sed efficaciter & continue commodum Domini adipisci nitatur & exarare, &c. There reade concerning both the Offices being worth your reading.

¶ *A le bailie ou a le Reeue.* Littleton intendeth into the hands of the Lord by the hands of the Bailiffe or the Reeue.

¶ *Ou al deux probes homes del Seignierie.* The custome doth guide these surrenders out of Court, and the custome must be pursued. Vid. lib. 4. fol. 25. Kite & Quaintins case.

¶ *Et tout ceo ils presenteront al procheine court, &c.* By the surrender out of Court the Copihold estate passeth to the Lord vnder a secret condition that it bee presented at the next Court according to the custome of the Mannor. And therefore if after such a surrender, and before the next Court hee that made the surrender dieth, yet the surrender standeth good, and if it be presented at the next Court Ceux que vis shall be admitted thereunto; but if it be not presented at the next Court according to the custome, then the surrender becometh void, and so was it clearely holden Pasc. 14. Eliz. in the Court of Common Pleas which I my selfe heard. vid. Cro. Je. 403 Godb. 268 Bridg. 50. S. C.

Sect. 80.

¶ ET issint est accauoire, que en diuers Seigniories, & diuers Manors, sont plusors & diuers customes en tiels cases, quant a prender tenements, & quant a pleader, & quant as autres choses & customes a faire, & tout ceo que nest pas encounter reason, poit bien estre admitte & allow.

AND so it is to bee vnderstood, that in diuers Lordships, and in diuers Manors, there be many and diuers customes, in such cases as to take tenements, & as to plead, and as to other things and customes to bee done, and whatsoeuer is not against reason, may well be admitted and allowed.

¶ *Sont plusors & diuers customes.* This was cautiously set downe, for in respect of the varietie of the customes in most Mannors, it is not possible to set down any certaintie, only this incident inseparable euerie custome must haue, viz. that it be consonant to reason, for how long soeuer it hath continued, if it bee against reason, it is of no force in Law. v. Flowd. fo: 400. a

¶ *Encounter reason.* This is not to be vnderstood of euerie vnlearned mans reason, but of artificiall and legall reason warranted by authoritie of Law: Lex est summa ratio.

Sect. 81.

¶ *Ils sont appelles tenants per base tenure.* Of this sufficient hath beene spoken before.

¶ ET tiels tenants q̃ teignont solonqz le custome dũ seignioʒie, ou dun manoʒ, coment que ils ont estate denheritance solonqz le custome del Seignioʒie ou manñ vnt̃ pur ceo q̃ ils nõt astr

AND these tenants which hold according to the custome of a Lordship or Mannor, albeit they haue an estate of inheritance according to the custome of the Lordship or Mannor, yet because

franktenement per le cours del Common Ley, ils sont appelles Tenants per base tenure.

they haue no freehold by the course of the Common Law, they are called Tenants by base tenure.

Sect. 82.

¶ *Tenant a volunt solonque le custom puit auer estate denheritance, &c.* Here note that Littleton alloweth that by the custom of the manor, the copiholder hath an inheritance, and consequently the Lord cannot put him out without cause.

¶ *Mes si home, &c. veile Lesser terres ou tenements a vn auter a auer & tener a luy & ses heires a volunt le lessor, ceux parols (a les heires de le lessee) sont voides, car en ceste case si le lessee deuie, & son heire enter le lessor auera action de trespasse enuers luy, &c.* By which it is proued that by the death of the lessee, the lease is absolutely determined, which is proued by this, that if the heire enter the Lessor shall haue an Action of trespasse, quare vi & armis, before any entrie made by the Lessor.

19.E.4.18. 22.E.4.13. 2.R.2. barre 237. 11.H.7.22. 21.H.7.12.

¶ Et diuers diuersities y sont perenter tenant a volunt, que est eins per lease son lessor per le course del common ley, & tenant solonqz le custome del Manor en le forme auantdit. Car il a volūt solonqz le custom puit auer estate denheritance (come est auantdit.) al volūt le seignior solōq̄ le custome & vsage del Manor. Mes si home ad terres ou Tenements, queux ne sont deins tiel Manor ou Seigniorie, ou tiel custome ad este vse en le forme auantdit, & poile lesser tiels terres ou tenements a vn auter, a auer & tener a luy & a ses heires a le volunt le Lessor, ceux parolx (a les heires de le Lessee) sont voids. Car en ceste case si le Lessee deuie & son heire enter le Lessor auera bon action de trespas enuers luy, mes nemy issint enuers iheire le terre per le custome en ascun cas, &c. pur ceo que le custome de le Manor en ascun cas luy puit aide de barrer son Seignior en action de trespasse, &c.

AND there are diuers diuersities betweene tenant at will which is in by lease of his Lessor by the course of the Common Law, and tenant according to the custome of the Manor in forme aforesaid. For tenant at will according to the custome may haue an estate of inheritance (as is aforesaid) at the will of the Lord, according to the custome & vsage of the Manor. But if a man hath lands or tenements which be not within such a Manor or Lordship, where such a custome hath beene vsed in forme aforesaid, and will let such lands or tenements to another, to haue and to hold to him, and to his heires at the will of the Lessor) these words (to the heires of the Lessee) are void. For in this case if the Lessee dieth, and his heire enter, the Lessor shall haue a good Action of trespasse against him, but not so against the heire of Tenant by the custome in any case, &c. for that the custome of the Mannor in some case may aid him to barre his Lord in an action of Trespasse, &c.

¶ *Put*

¶ *Pur ceo que le custome de le Manor en ascun case luy puit aider de barrer son seignior en action de trespasse, &c.* Hereby it appeareth that by the opinion of Littleton, the Lord against the custome of the Manor cannot oust the Copiholder.

Sect. 83.

¶ Item lun tenant per le custome en ascuns lieux doit repairer & sustener ses measons, & lauter tenant a volunt nemy.

ALso the one tenant by the custome in some places ought to repaire and vphold his houses, and the other Tenant at will ought not.

¶ *Per le Custome.* For what a copiholder may or ought to doe, or not doe, the custome of the Manor (a) must direct it, for Consuetudo Manerii est observanda. (b) But if there be no custome to the contrary, waste either permissiue or voluntarie of a Copiholder, is a forfeiture of his Copihold.

(a) Bract. lib. 2. fol. 76.

(b) Vide lib. 4. fol. 21, 22, &c. in cases de Copieholds.

Sect. 84.

¶ Item lun tenant per le custome ferra fealtie, & lauter nemy. Et pluisors auters diuersities y sont perenter eux.

ALso the one tenãt by the custome shall do fealtie and the other not, and many other diuersities there be betweene them.

¶ *Vn tenant per le custome ferra fealtie, & lauter nemy.* And the doing of fealtie by a Copiholder, proueth that a Copiholder so long as he obserues the Custome of the Manor & payeth his seruices hath a fixed Estate. For Tenant at will that may bee put out at pleasure shall not doe fealtie. For to what end should a man sweare to be faithfull & true to his Lord, and should beare faith to him which hee claimeth to hold of him, and that lawfully he shall doe his customes and seruices, &c. When he hath no certaine estate, but may be put out at the pleasure of the Lesor, or he himselfe may determine it at his pleasure, of these kinde of customarie Tenants, and of many things concerning them, you may read more in the fourth Booke of my Reports, fol. 21, 22, 23, &c. Thus much as I haue here set downe, may suffice for the vnderstanding of such Cases and Opinions as Littleton hath expressed.

Vide Sect. 131.

Lib. 4. fol. 21, 22, 23. &c.

Finis Libri primi.

THE SECOND BOOK of the first part of the Institutes of the LAWES of ENGLAND.

CHAP. I. *Homage.* Sect. 85.

¶ HOmage est le pluis honorable seruice, & pluis humble seruice de reuerence, que Franktenant puit faire a son Seignior. Car quant le Tenant ferra homage a son Seignior, il serra discinct, & son test discouer, & son Seignior seera, & le Tenant genulera deuant luy sur ambideux genues, & tiendra ses maines extendes, & ioyntes ensemble enter les maines le Seignior, & illint dirra: Jeo

¶ HOmage is the most honourable seruice and most humble seruice of reuerence that a Franktenant may doe to his Lord: For when the Tenant shall make Homage to his Lord, hee shall bee vngirt, and his head vncouered, and his Lord shall sit, and the Tenant shall kneele before him on both his knees, and hold his hands ioyntly together betweene the hands of his Lord, and shall say thus: I become your man

OUr Author hauing taught vs in his former booke the seuerall distinct estates of lands & tenements as most necessary to be known, for the vnderstanding of these two other bookes, doth in this second booke treat of the tenures & seruices, whereby the said lands & tenements been holden, which he diuideth into 12. parts, viz. Homage, Fealty, Escuage, Knights Seruice, Socage, Frankalmoigne, Homage Auncestrell, Grand Serjeantie, Petit Serjeantie, Tenure in Burgage, in Villenage, & into Rents, wherein his method is most excellent, for he beginneth with Homage, because it is the most humble seruice of reuerence, expressing the duty of the Tenant to his Lord, & the affectionate loue and protection of the Lord towards his Tenant, as hereafter shall appeare. Secondly, Fealtie, a sacred seruice, expressing by each

oath his fidelitie to his Lord.

Thirdly, Escuage, which is Seruitium scuti, the seruice of the Shield.

Fourthly, Knights Seruice, for the defence of the Realme against outward hostilitie and invasions, which the better might bee effected, if such dutie, fidelitie, and loue were betweene Lords and Tenants, as ought to be, and as the Law expecteth.

Fifthly, Socage, the seruice of the Plough, aptly placed next Knights Seruice, for that the Ploughman maketh the best souldier, as shall appeare in his proper place.

Sixthly, Frankalmoigne, Seruice due to Almightie God, placed towards the middest for two causes: First, for that the middest is the most worthy and most honourable place: and secondly, because the first fiue preceding Tenures and Seruices, and the other six subsequent, must all become prosperous and vsefull, by reason of Gods true religion and seruice; for Nunquam prospere succedunt res humanæ, vbi negliguntur diuinæ: Wherein I would haue our Student follow the aduice giuen in these ancient verses, for the good spending of the day:

Sex horas somno, totidem des Legibus æquis.
Quatuor orabis, des Epulisque duas.
Quod supereſt vltro sacris largire camænis.

Seuenthly, Homage auncestrell, ancient families, enioying with their bloud the ancient inheritance of their forefathers, as a great blessing of the Almightie.

8. & 9. Serjeantie grand & petit, due to the King only, to whom the highest and most eminent honour, ligeance, and reuerence of all kinde is due; which hath two notable effects: First, Imperii Majestas est tutelæ salus, according to the old rule: and secondly, it is an assured meanes of long continuance of Houses and Families in prosperous estate, whereof our Author speaketh in the Chapter before.

10. Then followeth the Tenure of Burgage, of ancient Burghes and Cities, &c. which are to be supported for the honour of the King, and for the maintenance of trade and traffique, the life of all Common-wealths, especially of Islands.

11. Villenage, for the performance of seruice, yet necessarie seruice for the cleansing of Cities, Boroughs, Mannors, &c. and for the better manuring of arrable grounds, and increase of Husbandrie.

12. And lastly, Tenure by Rents, which are called Viui redditus, because the Lords & owners thereof doe liue by them, which they shall enioy the better, if trade & traffique be maintained, and our native commodities, which are rich and necessarie, holden vp and saleable at a reasonable value. And now vnderstanding his method, let vs peruse our Authors words.

And as our Author began his first Booke with Fee simple, which is the most principall and worthiest estate, so he beginneth his second Booke with Homage, which is the most honourable and humble seruice.

(a) Glanu.li.9.ca.1.Bract. fo.78.80.Brit.fo.170,172, 173.Flet.li.3.c.16.Mir.c. 3.de Homage,&l.5.sect.1.

HOmage, is deriued of (a) Homo, and it is called Homage, because when he doth this seruice, he saith, Ieo deueigne vostre home: And in English Homage is called Manhood, so as the manhood of his Tenant, and the homage of his Tenant is all one. Mutua quidem debet esse Dominii & Homagii fidelitatis connexio, ita quod quantum homo debet domino ex homagio, tantum illi debet Dominus ex Dominio præter solam reverentiam.

deueigne vostre home de cest iour en auant, de vie, & de member, & de terrene honor, & a vous serra foyall & loyall, & foy a vous portera des Tenements que ieo claime de tener de vous, salue la foy que ieo doy a nostre Seignior le Roy, & donques le Seignior issint seyant, luy baisera.

from this day forward of life and limbe, and of earthly worship, and vnto you shall bee true and faithfull, and beare you faith for the Tenements that I claime to hold of you (sauing the faith that I owe vnto our Soueraigne Lord the King,) and then the Lord so sitting shall kisse him.

(b) Lib.Rub.ca.55.

¶ *Foyal & Loyal.* These words are of great extent, for they extend to the obseruation of the Lords counsell in whatsoeuer is honest and profitable. (b) Omais homo debet fidem Domino suo de vita & membris suis, & terreno honore, & obseruatione consilii sui per honestum & vtile, (comprehended in these words Foyal & Loyal) salua fide Deo & terræ Principi.

¶ *Seruice.* (c) Seruitium in Lege Angliæ regulariter accipitur pro seruitio quod per tenentes Dominis suis debetur ratione feodi sui. But Seruitium est duplex, Spirituale, whereof more shall be said in the chapter of Frankalmoigne: & Temporale, whereof our Author here treateth: And he beginneth with Homage, first, because it is most honourable, for, Honor plus est in honorante, quam in honorato. 2. It is pluis humble de reuerence, and both of these for fiue causes on the part of the Tenant. First, The Tenant when he doth his homage is discinctus, disarmed or vngarded. Secondly, Nudo capite, bare headed. Thirdly, Ad pedes Domini super genua projectus. Fourthly, Ambas manus junctas inter manus Domini porrigit. Fifthly, Per verba omni supplici veneratione plena, he saith, Ieo deueigne vostre home, &c. And for three causes on the part of the Lord: First, The Lord doth sit. Secondly, He inclioseth his Tenants hands betweene his owne. Thirdly, The Lord sitting kisseth the Tenant. Prudent Antiquitie did for the more solemnitie and better memorie and obseruation of that which is to be done, expresse substances vnder ceremonies.

(c) 2.H.4.6.

Glanuil. & Mir. vbi supra.

Nil sine prudenti fecit ratione vetustas.

¶ *Ieo deueigne vostre home de vie & de member.* And therefore he is discinctus, for that he must neuer be armed against, or opposite to his Lord, but both life and member must be ready for the lawfull defence of his Lord.

¶ 2 *De terrene honor.* Expressed by kneeling at the feet of his Lord.

Bract. fol. 80.
Britton fol. 173. b. &c.
Fleta lib. 4. cap. 16.

3 Debet quidem tenens manus suas vtrasque ponere inter manus vtrasq; Domini sui, per quod significatur ex parte Domini protectio, defensio, & warrantia, & ex parte tenentis reuerētia & subjectio. So as the holding vp of the Tenants hands betokeneth reuerence & subiection, & the Lords inclosing of his Tenants hands betweene his owne, betokeneth protection & defence.

¶ 4 *Et a vous serra foyal & loyal, & foy a vous portera, &c.* This faith, Fides, or Fœdus perpetuum, this perpetuall league betweene the Lord and the Tenant is expressed by the Lords kissing of the Tenant: And some say, That Fœdus dicitur à fide, quia fides interponitur: And so firme and strong was this league betweene them, that by the ancient Law of England, Nihil facere potest tenens propter obligationem homagii, quod vertatur Domino ad exhæredationem, vel aliam atrocem injuriam. Nec Dominus tenenti è conuerso, quod si fecerint dissoluitur & extinguitur homagium omnino & homagii connexio & obligatio, & erit inde justum judicium cum venerit contra homagium & fidelitatis Sacramentum, quod in eo in quo delinquunt puniantur, s. in persona Domini, quod amittat dominium, & in persona tenentis, quod amittat tenementum.

Bract. vbi supra.
Britt. fol. 174.

¶ *Des tenements queux ieo claime a tener de vous.* Britton saith, That (a) in doing of homage he must name the Lands or Tenements for which he doth homage in certaintie, and the reason is, Ne in captione homagii contingat Dominum per negligentiam decipi vel per errorem.

(a) Britt. vbi supra.
Bract vbi supra.
Glanuil. lib. 9. cap. 1.
Mir. cap. 3. de Homage.

For the better vnderstanding of that which shall be said hereafter, it is to be knowne, That first, there is no land in England in the hands of any subiect, (as it hath beene said) but it is holden of some Lord by some kinde of seruice, as partly hath beene touched before.

Secondly, All the Lands (b) within this Realme were originally derived from the Crowne, and therefore the King is Soueraigne Lord, or Lord Paramount, either mediate or immediate of all and euerie parcell of land within the Realme.

(b) 18.E.3.35. 44.E.3.5. 48.E.3.9. 8.H.7.12.

Thirdly, That in ancient time Lords vpon the creation of their Tenures did not only reserue rents, seruices, and profit, &c. for which they might distreine and haue other remedy, but also tooke an humble submission of his Tenant by promise and oath, (for to homage fealtie is incident) to be true and faithfull to him for the Tenements holden of him, which submission is called homage and fealtie, according to the tenure reserued.

¶ *Salue le foy que ieo doy a nostre Seignior le Roy.* Both because there is Homagium ligeum, which is due to the King onely, and also because he is Soueraigne Lord ouer all.

Glanuil lib. 9 c. 1. Mir. c. 3. de Fealtie. Bract. vbi supr. Britt. vbi supra.

I haue seene an ancient Record in Anno 6. Edw. 1. in these words, Michael de North qui sequitur pro Rege quæritur quod cum Dominus Rex ratione regiæ dignitatis & Coronæ suæ tale habeat priuilegium quod nullus in regno suo de aliquo qui sit in regno Angliæ alicui homagium facere debeat, vel aliquis hujusmodi homagium ab aliquo recipere debeat nisi facta mentione de homagio Domino Regi debito eidem Domino Regi fideliter obseruand' Walterus Exon Episc. in contemptu Domini Regis & ad manifestam quoad priuilegium prædictum ipsius Domini Regis exhæredationem, & ad damnum & dedecus ipsius Domini Regis ad Valentiam decem Mill' librarum de Henrico de Pomeray, Thoma de Kanc', Iohanne de bello prato, Laurentio filio Ric. Iohanne

Iurer Inquis. apud Lancestion, anno 6. E. 1. Cornub. in Thes.

hanne le Soer, Willielmo de Alex', Eudone de Tranael, Rogero le gros, Iohanne le Lunge, Radio de Beuill, Guidone Nouant, Willielmo de Rousketrek, & Hen. Cannel accepit seruitia contra priuilegium prædict', nulla facta mentione de homagio & fidelitate Domino Regi debitis. And iudgement in the end was giuen against the said Bishop.

(d) Mirror ca. 1. sect. 2. & cap. 2. sect. 1. & 2. Bract. fo. 5. 107. 368. 369. 340. Fleta lib. 1. cap. 5. Fortescue cap. 8. & 37. Stanf. pl. cor 98. 99. & Prær. 65.

(e) Glanuil lib. 9. ca. 1. Bracton fol. 78. b. Britt. c. 68. fo. 170. 171. Fleta lib. 3. cap. 16.

(g) Glanuil lib 9. cap. 1. Bracton lib. 2. 78. Fleta lib. 3. cap. 16 acc. 21. E. 3. 40. 26. E. 3. 63. 64. 32. E. 3. aga. 80. & tit. per quæ seruitia 9. 13. H. 4. 5. 33. H. 6. 16. 20. E. 3. per quæ seruic. 24.

(h) Britton fol. 171.

(i) Glanuill lib. 9. c. 1. F. N. B. 157. Regist. 296. Britton vbi supra. Mirror cap. 1. sect. 3.

Roy. Our Ancestors the Saxons termed him Coning or Cyning, a name signifying power and skill. which by way of contraction we now call King. This name the Saxons with a small alteration had from the Brittaines who called him Koningh or Koninacker. in French he is called Roy, in Italian Re, in Spanish Rey, all derived from the Latine (Rex) of the true signification whereof you shall read (d) plentifull matter in our old Bookes.

So as Homage is diuided first, In homagium ligeum, & non ligeum.

2. In homagium antecessorium, & non antecessorium. It is here necessarie to be knowne, what Tenant that holdeth by homage shall doe homage. (e) Item videndum quis potest homagium facere. Sciendum est quod quilibet liber homo tam masculus quam femina, clericus & laicus, major & minor, dum tamen electi in episcopos, post consecrationem homagium non faciant, quicquid fecerint ante, sed tantum fidelitatem. Conuentus autem Homagium non faciet de jure sicut nec Abbas, nec Prior, eo quod tenent nomine alieno scilicet nomine Ecclesiarum.

(g) One within the age of 21. yeares may doe homage, but Bracton saith he cannot do fealtie, because in doing of fealtie he ought to be sworne, which an infant cannot be. But some opinions be in our bookes to the contrary, viz. that an infant shall doe fealtie, but I take it to be meant of Homage, and herewith (h) agreeth Britton who saith, Et tout soit que enfant deins age fait homage, pur ceo ne volons nous my que il face serement de fealtie, jesque a taunt que il soit de pleine age, & tout soit ceo comon dit del people que fait de enfant fait deins age ne soit fait my a tener estable. volons nequedent que chescun home & chescun feme de quel age que ils soient, facent homage a lour Seigniour solonque lestatut de la grand charter.

Glanuill saith, (i) Women shall not doe homage, but Littleton saith that a woman shall doe homage, but she shall not say, Ieo deueigne vostre feme, but Ieo face a vous homage, and so is Glanuill to be vnderstood, that she shall not doe compleat homage.

Sect. 86.

(k) Glanuill lib. 1. cap. 9. in fine. Bracton lib. 2. 78. Bracton cap. 68. Fleta lib. 3. cap. 16.

(l) Vid. Sect. 96. & 133.

NO man of Religion when (k) hee doth homage shall say, Ieo deueigne vostre home, because hee hath professed himselfe the man of God, yet shall he doe homage, and shall say, (l) Ieo face a vous homage, & à vous serra foyall & loyall, &c. and note that here religion is taken largely, for it extends not only to regular persons as Abbots and the like, but also to all Ecclesiasticall persons, as Bishops, Deanes or any other sole ecclesiasticall body politike, & so it is in vse at this day, which also appeares in our old books.

And it is to be obserued that in old bookes and records, the homage which a Bishop, Abbot or other man of religion doth, is called Fealtie, for that it wanteth these words (Ieo deueigne vostre home.) But yet in iudgement of Law it is homage, because he saith, I doe to you homage, &c. and so of a woman.

MEs si vn Abbe, ou vn Prior ou auter home de religion serra homage a son seignior, il ne dirra: Jeo deueigne vostre home, &c. pur ceo q̃ il ad luy professe pur estr̃ tant solement le home de Dieu: mes il dirra issint, Jeo vous face homage & a vous serra foyal & loyal, & foy a vous portera des tenements que Jeo teigne de vous, saluela foy que Jeo doy a nostre Seignior le Roy.

BVt if an Abbot or a Prior, or other man of religion shall doe homage to his Lord, he shall not say, I become your man, &c. for that hee hath professed himselfe to bee onely the man of God. But he shall say thus, I doe homage vnto you, and to you I shall bee true and faithfull, and faith to you beare for the Tenements which I hold of you sauing the faith which I doe owe vnto our Lord the King.

Sect.

Sect. 87.

Pur ceo que nest conuenient, &c. By this it appeareth (m) that Argumentum ab inconuenienti plurimum valet in lege, as often shall be obserued hereafter. Non solum quod licet sed quid est conueniens est considerandum, nihil quod est inconueniens est licitum.

(m) For like reasons ab inconuenienti. vide Sect. 138.139 231.265.440. 478 665.722.730. 21.H.7.13.F.N.B.230.d. 16.H.7.9.

ITem si feme sole tenra homage a son Seignior, el ne dirra: Jeo deueigne vostre feme, pur ceo que nest conuenient que feme dirra que si deuiendra feme a ascun home forsqz a sa baron quant el est espouse: mes il dirra, Jeo face a vous homage, & a vous serra foyall & loyall, & foy a vous porterа des tenements que jeo teigne de vous, salue la foy que jeo doy a nostre Seignior le Roy.

ALso if a woman sole shall doe homage, shee shall not say, I become your woman, for it is not fitting that a woman should say that shee will become a woman to any man but to her husband when shee is married, but she shall say, I do to you homage, and to you shall be faithfull & true, and faith to you shal beare for the tenements I hold of you, sauing the faith I owe to our Souereigne Lord the King.

Sect. 88.

ITem home puit veier en vn bone note 9.15.E.3. Lou vn home & sa feme fiet homage & fealtie en le Common Bank, q̃l est escrie ẽ tiel form̃. Nota que J. Leukner & Elizabeth sa feme, fiet homage a W. Thorpe en cest maner, Lun & lauk tiendront iointm̃t lour mains enter les mains W. T. & le baron dit en cest forme: Nous vous ferromus homage, & foy a vous porterons, pur les tenements q̃ nous teignomus de A. vr̃e conusor q̃ a vous ad graũt nostre seruices en B. & C. & auters villes, &c. encount̃ touts gents: salue la foy que nous deuous a nostre Seig-

ALso a man may see a good note in M. 15. E. 3. where a man and his wife did homage and fealtie in the Common Place, which is written in this forme: Note that *I. Lewknor* and *Eliz.* his wife did homage to *W. Thorpe* in this manner: The one and the other held their hands ioyntly betweene the hands of *W. T.* and the Husband saith in this forme: Wee doe to you Homage, and faith to you shall beare for the tenements which we hold of *A.* your Conusor, who hath granted to you our seruices in *B.* and *C.* and other Townes, &c. against all Nations, saving the faith which wee owe to our Lord the King and to his heires, and to our

(n) Mich.15.E.3. tit. Auowrie 109.

IN this (n) Record 3. things are to bee obserued.

1. How necessarie & profitable Records and obseruations are; albeit they were not published in print, for at the time when Littleton wrote, this Record was not printed.

2. That the Husband and wife doing homage, the Husband shall speak the words for them both, viz. Wee doe to you Homage, &c.

3. That the Homage which the Husband and wife doe, is the verie Homage which y wife should do alone, but this ioint Homage done by the Husband and wife, is intended to bee before issue had between them, whereof more shall be said hereafter. And it is to bee obserued, that verie few Cases ruled or resolued in the reigne of Edward the third, but y same or the like hed

semoit q doit ẽ psens; car en cc sance cc vol (ainst) ẽ frequent prist en nr̃ Liuers.

had beene ruled or resolued in the reignes of Edward the second, Edward the first, or before, as for example for warrant hereof, vide Hill. 17. E. 2. Rot. Parl. &c.

nior le Roy, & a ses heires, & a nostr̄ autrs seigniors: & lun & lauter luy baserōt. Et puis ils fier̄ fealtie, & lun & lauter tiendront lour mains sur vn lieur, & le baron dit les paroir, & ambdō baseront le lieur.

other Lords, and both the one and the other kissed him. And after they did fealtie, and both of them hold their hands vpon the Booke, and the Husband said the words, and both kissed the Booke.

Sect. 89.

¶ *Et a mes auters Seignours.* This sauing for other Lords is good for explanation, albeit the homage is referred only to the tenements which he holdeth of him to whom he doth the homage.

¶ Nota si vn hōe ad seuerall tenancies queux il tient de seuerals Seigniors, s. chescun tenancie per homage, donque quant il fait homage a vn des Seigniors, il dirra en le fine de son homage fait, salue la foy que ieo doy a nostr̄ Seignior le Roy, & a mes auters Seigniors.

NOte if a man hath seuerall Tenancies which he holdeth of seuerall Lords, that is to say, euerie tenancie by homage, then when hee doth homage to one of his Lords, hee shall say in the end of his homage done, sauing the faith which I owe to our Lord the King, and to my other Lords.

Sect. 90.

¶ *En droit dun auter.* As the Husband and wife in the right of his wife; the Bishop in right of his Bishoprieke, &c. the Abbot or Prior in right of his Monasterie, &c. But no Corporation aggregate of many persons capable, be the same Ecclesiasticall or Temporall, can doe homage, as a Deane and Chapter, Maior and Commonaltie; and such like, albeit they be seised in fee of lands holden by homage yet shall not they do homage. And the reason is because that homage must be done in person, and a Corporation aggregate of many cannot appeare in person, for albeit the bodies naturall whereupon the body politique consists may bee seene, yet the body Politique or Corporate it selfe cannot bee seene, nor doe any act but by Atturney, and homage must euer be done in person, &c. And albeit an

(p) 33. H. 8. tit. Fealtie. Br. 15. Lib 14. fol. 11. Lib. 7. fol. 10. Lib. 10. f. 31.

¶ Nota que mul ferra homge, mes tiel que ad estate en fée simple, ou en Fée taile, en son droit demesne, ou en droit dun auter. Car il est vn Marime en Ley que il q̄ ad estate forsqz pur terme de vie, ne ferra homage, ne prendra homage. Car si feme ad terres ou tenements en Fée simple, ou ē fée taile, queux el tient de son Seignior per homage, & prent baron, & ont issue, donque le Baron en la vie la feme ferra homage,

NOte, none shal do homage but such as haue an estate in fee simple, or fee taile in his owne right, or in the right of another. For it is a maxime in Law, that he which hath an estate but for terme of life, shall neither doe homage or take homage. For if a woman hath lands or tenements in Fee simple or in Fee taile which shee holdeth of her Lord by homage, and taketh husband, & haue issue, then the husband in the life of the wife shall doe ho-

pur

pur ceo que il ad title dauer les tenements per le curteſie Dengleterre ſil ſurueſquiſt la feme, & auxy il tient en droit de ſa feme. Mes ſi la feme deuy deuant homage fait per le baron en la vie ſa feme, & le baron ſoy tient eins come tenant per le curteſie, donques il ne ſerra homage a ſon ſeignior, pur ceo que il adonque nad eſtate forſque pur terme de vie.

¶ Plus ſerra dit de homage ẽ le tenure per homage Auncеſtrel.

mage, becauſe he hath title to haue the tenements by the curteſie of *Eng.* if he ſuruiueth his wife, and alſo hee holdeth in right of his wife, but if the wife dies before homage done by the husband in the life of his wife, and the husband holdeth himſelfe in as tenant by the curteſie, then he ſhall not doe homage to his Lord, becauſe hee then hath an eſtate but for terme of life.

¶ More ſhall bee ſaid of homage in the tenure of homage anceſtrell.

Abbot and Couent is a corporation aggregate of many, yet becauſe the Couent are all dead perſons in Law, the Abbot alone in nature of a ſole corporation ſhall doe homage.

¶ *Vn maxime en Ley.* A maxime is a propoſition, to be of all men confeſſed and graunted without proofe, argument, or diſcourſe, Contra negantem principia non eſt diſputandum. But of this ſomewhat hath beene ſaid before.

¶ *Il que ad eſtate forſque pur terme de vie.* (q) A Parſon or Vicar of a Church that hath a qualified fee, (r) and yet to many intents vpon the matter but an eſtate for life, can neither receiue homage nor do homage as a Biſhop, an Abbot, or any ſuch like that hath a fee abſolute may. (ſ) So if a man and his wife be ſeiſed in fee of a Seigniory in the right of his wife, the husband ſhall not receiue homage alone, but he and his wife together. (t) But if the husband in that caſe hath iſſue by his wife, then he ſhall receiue homage alone during the life of his wife, and the reaſon is, becauſe he by hauing of iſſue is intitled to an eſtate for terme of his owne life, in his owne right, and yet is ſeiſed in fee in the right of his wife, ſo as he is not a bare tenant for life. But if his wife dye, then he hath only but an eſtate for life, and then he cannot receiue homage. Yet tenant for life or yeares of a Seigniory (u) ſhall haue Ward, Marriage, and Reliefe, and ſhall ſuppoſe that the Tenant died in the fealty of the Pl. (x) Fieri poſſunt homagia libero homini tam maſculo quàm fœminæ, tam maiori quàm minori, tam clerico quàm laico.

(q) Glanuil. lib. 9. cap. 2. Britton fol. 170. Temps E. 1 tit. Iuris vtrum 13.
(r) 8. E. 4. 28. 39. E. 3. 15 1. 3. E. 3. Auowry 175.
(ſ) 2. E. 2. auowrie 183. F.N.B. 257. 13. E. 3. gard. 39.
(t) 17. Aſſ. p. 51. F.N.B. 257. 13. H. 6. auowrie 21. 43. E. 3. 13. 44. E. 3. 41. 3. E. 3. auowrie 175. 13. E. 3. 2. gard. 39. 22. E. 3. fol. 19. gard. 44.
(u) 6. E. 2 gard. 122. 13. E. 3. gard. 39. 22. E. 3. gard. 44.
(x) Glanuil. lib 9. cap. 3. 18. E. 3. 7. 43. E. 3. 13. 44. E. 3. 41. 13. H. 6. auowrie 21. 8. H. 6. 13. 7. E. 4. 27. F.N.B. 257.

¶ *Et ount iſſue, donque le baron en la vie la feme ferra homage.* The reaſon hereof is rendred before, and alſo that after the death of his wife he being but a bare Tenant for life ſhall doe no homage; for regularly it is true, that he that cannot receiue homage in reſpect of the weakneſſe of his eſtate in the Seigniory, ſhall not doe homage if he hath a like eſtate in the tenancie.

If a man hold of the King and hath iſſue diuers daughters, and dieth, the King ſhall haue homage of euery one of theſe daughters. And this (a) appeareth by the Statute de Hibernia anno 14. H. 3. to be the Common Law, for that Act ſaith, In regno noſtro Angliæ talis eſt lex & conſuetudo, quod ſi quis tenuerit de nobis in capite, & habuerit filias hæredes ipſo patre defuncto, anteceſſores noſtri habuerunt & ſemper nos habuimus & cepimus homagium de omnibus huiuſmodi filiabus, & ſingulæ earum tenerent de nobis in capite in hoc caſu. And therefore where by the (b) Statute De prærogatiua Regis, it is prouided, Si vna hæreditas, &c. that is but an affirmance of the Common Law. (c) But this is to be vnderſtood where the coheires be of full age, for if they be within age and in ward to the King, Primogenita tantum faciet homagium pro ſe & ſororibus ſuis, & aliæ ſorores cum ad ætatem peruenerint facient ſeruitia Dominis feodorum per manum primogenitæ. (d) And therefore if a man holds of a common perſon by the ſeruice of homage, and hath iſſue diuers daughters and dieth, the eldeſt daughter only ſhall doe homage for her and all her ſiſters. And this appeareth alſo by the Statute of Hibernia. Primogenita tantum faciet homagium Domino pro ſe & omnibus ſororibus ſuis. And the reaſon is there rendred afterward, Quia omnes ſorores ſunt quaſi vnus hæres de vna hæreditate. (e) But if the Coparceners in that caſe make partition, then euery one ſhall doe homage, becauſe now it is not Vna ſed diuerſa hæreditas. (f) And ſo it is if one make a feoffement in

(a) 14. H. 3. tit. prærog. 5.
(b) Prærog. Regis cap. 5.
(c) Statut. de homagio capiendo Temps E. 1.
(d) Glanuil. lib. 7. cap. 3. & lib. 9. cap. 2. Bract. lib. 1. de homag. capiend. & lib. 2. fol. 78, 80. Britton fol. 168. b. 171. 172. Fleta lib. 3. cap. 16. & lib. 2. cap. 60. & lib. 5. cap. 9. F.N.B. 161. 159. 259. Stanf. prær. 23. 24.
(e) F.N.B. 162. Vide 11. E. 4. auowrie 101
(f) 45. E. 3. 23. 24. E. 3. 73. Marlbrige cap. 9. F.N.B. 162.

fee (which is a partition in law for that part) the feoffee shall doe homage, for euery Tenant in common shall doe seuerall seruices. And it hath beene adiudged (g) in our Bookes, that if the eldest Coparcener doe homage to the Lord, and afterward the younger sister maketh a feoffment in fee of her part, the Lord shall haue homage for the part of the younger sister, for that which was vna hæreditas, one Inheritance by law, by the alienation which is her act is (as hath beene said) diuided and become in grosse, and the Coparcenary defeated

(g) 2. E. 2. auowrie 179.

But if Tenant enfeoffe diuers men in fee ioyntly, (h) all these ioyntenants shall ioyntly doe their homage, and their fealty also. (i) If homage be due by the Tenant, and hee maketh a feoffment in fee, the feoffor shall not doe homage, because albeit he is supposed to be Tenant in some cases, quand al auowrie, yet the Feoffee is very Tenant, and homage shall euer be done by the very Tenant, but that very Tenant needeth not to be very Tenant of the Land, and therefore the Meine because he is very Tenant to the Lord Paramount (though he be not tenant of the Land) shall doe homage. And so it is of the Disseisee, and of Tenant in tayle, after a feoffment in fee, for in that case the Donee is very Tenant to the Donor.

(h) 7. E. 4. 27. 28. 14. H. 4. 38. 1. H. 5. grant. 43. 31. E. 3. gard. 116.

(i) 48. E. 3. 8. 15. E. 4. 13. 5. E. 4. 3.

If a Tenant that holdeth by homage maketh a feoffment in fee of part, (k) that Feoffee shall doe homage, and so shall euery Feoffee of what part soeuer.

(k) 22. E. 4. 22.

If there be two Coparceners or Ioyntenants of a Seigniory, if the tenant doth homage and fealty to one of them (l) he shall be excused against the other.

(l) 3. E. 2. auowrie 187. 13. H. 4. 5. 13. R. 2. tit. auowrie 89. 8. H. 3. tit. prescription 38. Hill. 22. E. 1. coram Rege Rot. 43.

If homage be parcell of a tenure, it is a presumption that the tenure is by Knights Seruice, vnlesse the contrary be proued, but of it selfe it maketh not Knights seruice. And yet by custome the heire of him that holds by homage only may be in Ward.

Now shall be said of homage in the title of Homage ancestrell.

By 12 Ca. 2. 24. This tenure is abolished

Chap. 2. Fealtie. Sect. 91.

(a) Bract. lib. 2. fol. 80. Britton Regist. origin. 302. Mirror cap. 3. de serement. & de fealt. statut. de 17. E. 2. tit. homage.

FEaltie in frech is feaulty, & is (a) deriued of the Latine word Fides, or fidelitas.

(b) Bracton lib. 2. fol. 80. a. Brit. fo. 173. Fleta lib. 3. cap. 16. Littleton fol. 69 nu. 132. 40. E. 3. 34. 9. H. 6. 43. 10. H. 6. 13. 5. H. 5. 12. 9. E. 4. 1. 21. E. 4. 29. 5. H. 7. 11.

¶ *Et quant franktenant.* Euery freeholder, except Tenant in frankalmoign shall doe fealty (b) And yet some that are not Tenants of any freehold shall doe fealtie, as a tenant for yeares shall doe fealty. Bracton saith, De nullo tenemento quod tenetur ad terminum fit homagium sit tamen inde fidelitas Sacramentum.

¶ *Que a vous serra foial & loial, &c. & foy a vous portera des tenements que ieo claime a tener de vous, & que loialment a vous ferra les customes & seruices, &c.*

¶ Fealty, idem est quod Fidelitas en Latin. Et quant franktenant ferra fealtie a son Seignior, il tiendra sa maine dexter sur vn Lieur & dirra issint; Ceo oyes vous mon Seignior, q̃ ieo a vous serra foyal & loyal, & foy a vous portera des tenemẽts que ieo claim̃ a tener ô vous, & que loyalment a vous ferra les customes & seruices queux faire a vous doy as termes assignes, si come moy aide Dieu & ses Saints, & basera le Lieur. Mes il ne genulera quant il fait Fealty, ne ferra tiel humble reuerence, come auant est dit en homage.

FEalty is the same that *fidelitas* is in Latine. And when a freeholder doth fealty to his Lord, hee shall hold his right hand vpon a booke, and shall say thus, Know yee this my Lord, that I shall be faithfull and true vnto you, and faith to you shall beare for the lands which I claime to hold of you, and that I shall lawfully doe to you the customes and seruices which I ought to do at the termes assigned, so helpe mee God and his Saints, and hee shall kisse the booke. But he shall not kneele when hee maketh his fealty, nor shall make such humble reuerence as is afore said in homage.

(c) Fealtie

(c) Fealtie is a part of homage, for all the words of fealtie are comprehended within homage, and therefore Fealty is incident to homage. (c) Mirror cap. 3. de ser. & de fealtie.

¶ *Sicome moy aide dieu.* As homage is the more honourable seruice, so Fealtie is a seruice more sacred, because he is sworne thereunto. And the reason wherefore the Tenant is not sworne in doing his homage to his Lord is, for that no subiect is sworne to another subiect to become his man of life and member but to the King only, and that is called the oath of Allegeance or homagium ligeum. And those words for that purpose are omitted out of fealtie, which is to be done vpon oath. And Littleton said well (when a Freeholder doth Fealtie) (d) for the Fealtie of him that holdeth in Villenage differeth from the Fealtie of the Freeholder. For the Villeine holding his right hand vpon the booke shall say thus to his Lord, Heare you my Lord A. that I A. B. from this day forward shall bee to you true and faithfull, and shall owe you Fealtie for the Land that I hold of you in Villenage, and shall be iustified by you in body and goods, so helpe me God, &c. as by the act appeareth. (d) Stat. de 17. E 2. tit. Homage in le abridgment.

Section 92.

¶ Et graund diuersitie y ad p enter fealsans de fealtie & de homage, car homage ne poit estre fait forsque al sñr m: Mes le Seneschal de court le Sñr, ou Bailife, puit prender fealty pur le Seignior.

And there is great diuersitie betweene the doing of fealty, and of homage; for homage cannot be done to any but to the Lord himselfe, but the steward of the Lords Court, or Bailife may take Fealtie for the Lord.

¶ Bracton lib. 2. fol. 80. saith thus; Sciendum est quod non per procuratores nec per literas fieri poterit homagium, sed in propria persona tam domini quam tenentis, capi debet & fieri. Bracton lib. 2. fo. 8. 21. E. 4. 17. acc. 2. E. 3. 10. 32. H. 6. 23. lib. 9. fo. 76.

¶ *Mes le seneschal, &c. ou Bailife poet prender fealtie.* This is so euident as it needeth no explanation. (e) Vid. For the signification of Seneschal and Bailife Sect. 78, 79. 248. & 379.

Section 93.

¶ Item tenant a terme de vie ferr fealtie, & vncore il ne ferra homage. Et diuers autres diuersities y sont perenter homage & fealtie.

Also tenant for terme of life shall doe fealtie, and yet hee shall not doe homage. And diuers other diuersities there bee betweene homage and fealtie.

¶ The tenant must doe Fealtie in person, because hee must be sworne vnto it, and no man can sweare by the Common Law by Attorney or Proxy. Lib. 9. fol. 76

Section 94.

¶ Item home poit heir 15. E. 3. coment home et sa feme fieront homage et fealtie en common banke, que lest escript deuant en Tenure de homage.

Also a man may see in 15. *E.* 3. how a man and his wife shall doe homage and fealty in the common place, which is written before in the Tenure of Homage.

¶ This is euident & appeareth before, & if Lords knew what benefit they may reape by receiuing of Homage and fealty they would not neglect them, (e) for by the receiuing of either of them, it is a sufficient seisin of all manner of seruices, as by the words (f) of either of them appeareth. Now if it be demanded, what (e) Lib. 4. fo. 3. & 9. Beuils case 13. E. 4. 5. (f) Vid. Sect. 113. 130. 131. 138.

What difference is betweene the oath of fealtie, when it is done to the King in respect of a tenure, and the oath which euery Subiect ought to take in respect of his allegeance, Littleton here setteth downe the oath of Fealtie. Now the (g) Oath of Allegeance is thus, You shall sweare, &c.

(g) Brit. ca.29. Calvins case.lib.7.fol.6.b. 12.H.7.18.

Plus serra dit de Fealtie en le tenure en Socage, & en le Tenure en Frankalmoigne, & en le Tenure per homage Auncestrel.

More shall bee said of Fealtie in the Tenure in Socage, and in Frankealmoigne, and in the Tenure by homage Auncestrell.

Then it may bee demanded, where and when is this oath to be taken, and it is answered, That whosoeuer is aboue the age of twelue yeeres, is to be sworne in the Tourne, vnlesse he be within some Leet, and then in the Leet: And I reade amongst the Lawes of Saint Edward, Quod hanc Legem inuenit Arthurus, qui quondam fuit inclitissimus Rex Britannorũ, & ita consolidauit & confœderauit Regnum Britanniæ vniuersum semper in vnum. Huius legis authoritate expulit Arthurus prædictus Saracenos & inimicos à regno. Lex enim ista diu sopita fuit & sepulta donec Eadgarus Rex Anglorum excitauit, & erexit in lucem, & illam per totum Regnum obseruari præcepit. Which law in some manner is obserued at this day. But to returne to Littleton.

Lambert. 135.

A

CHAP. 3. *Escuage.* Sect. 95.

(a) Mir.ca.1. sect.3. Brit.fo.162. &c. Ockam cap. Quid sit scutagium.

ESCuage.(a) In Latine Scutagium (id est) Seruitium scuti, Seruice of the Shield, hereby it appeareth that right interpretations and Etymologies are necessary: For, ad recte docendum oportet primum inquirere nomina, quia rerum cognitio a nominibus rerum dependet.

Nomina si nescis, perit cognitio rerum.

And herewith agreeth that which is said, Primo excutienda est verbi vis ne sermonis vitio obstruetur oratio, siue lex sine argumentis.

Scutum in French is Escue, and thereof commeth the Escuer, i. Scutifer, which wee vsually call Armiger. (b) Of this Bracton saith, Item scutagium dicitur quòd talis præstatio pertinet ad scutum quòd assumitur & seruitium militare. And Fleta saith, Sunt quædam seruitia forinseca, & dici possunt regalia quæ ad scutum præstantur, & inde habemus scutagium, & ratione scuti pro feodo militari reputatur. And Ockam saith, Hæc itaque summa quia nomine scutorum soluitur, scutagium nuncupatur.

(b) Bract.li.2.fo.36.2. Flet.li 3.ca.14. Ockam. vbi supra.27. Ass.52. 31.Ass.38.

ESCuage est appell en Latine Scutagium, cestascauoir, Seruitium Scuti. Et tiel tenant que tient sa terre per Escuage, tient p̃ seruice de Chiualer. Et auri il est communement dit, que ascun tient per vn fée õ seruice de Chiualer, & ascun per le moity dun fée de seruice de chiualer, &c. Et il est dit, que quant le Roy face voyage royal en Escoce pur subduer les Scotes, donqs il que tient per vn fée de Seruice de chiualer, couient estr̃ oue le Roy per 40. iours, bien & cõuenablement array pur le Guerre. Et celuy que tient sa Terre per le

E Scuage is called in Latine, *Scutagium*, that is, Seruice of the Shield; and that Tenant which holdeth his Land by Escuage, holdeth by Knights seruice. And also it is commonly said, That some hold by the seruice of one Knights fee, and some by the halfe of a Knights Fee. And it is said, That when the King makes a voyage royall into Scotland to subdue the Scots, then he which holdeth by the seruice of one Knights Fee, ought to be with the King fortie dayes, well and conueniently arrayed for the warre: and hee which holdeth his Land by the moitie of a Knights

moity

moitie dun Fee de chiualer couient este oue le Roy per 20. iours. Et il que tient son terre per le quart part dun Fee de chiualer couient este oue le Roy per 10. iours, et issint que pluis, pluis; et que meins, meins.

fee, ought to be with the King twentie dayes: and he which holdeth his land by the fourth part of a Knights fee, ought to be with the King ten dayes, and so he that hath more, more; and he that hath lesse, lesse.

¶ (c) *Et tiel tenant que tient son terre per Escuage tient per seruice de Chiualer.* (d) For as fealty is incident to homage, so homage and knight seruice bee incident to Escuage, and by the graunt of services, escuage passeth with the rest. Euery tenure by Escuage is a Tenure by Knights Seruice: but euery Tenant that holdeth by Knights seruice, holdeth not by Escuage, as shall be said hereafter. But note here the wisdome of Antiquity, (e) Mauult enim Princeps domesticos quam stipendiarios bellicis apponere casibus, that is, to be serued in his warres by his owne subiects, rather than by stipendary Forainers.

(c) Mirr. cap. 1. Sect. 3.

(d) 2. E. 3. 8 b. 19 E. 3. auowry 194. 26. H. 8. 1. a. 20. E. 3. Per quæ seruic. 12. 43. E. 3. 22. F. N. B. 83. 84.

(e) Lib. rub. int. 6a & sect. 111

¶ *Vnfee de seruice de Chiualer.* (f) There is great diuersity of opinions concerning the Contents of a Knights fee, that is, how much Land goeth to the liuelyhood of a Knight; for some say that a Knights Fee consisteth of eight hides, and euery hide containeth an hundred acres, and so a Knights Fee should containe 800. acres: others say that a Knights fee containeth 680. acres: others say that an oxegange of Land containeth 15. acres, and eight oxgangs make a plowland; by which account a plowland containes 120. acres, and that virgata terræ, or a yard land containeth 20. acres. But I hold that a Knights fee, an hide or plowland, a yardland or oxgange of land doe not containe any certaine number of Acres. But a Knights fee is properly to be esteemed according to the quality, and not according to the quantity of the land, that is to say, by the value, and not by the content. And therefore it is very true which Master Camden in his Britannia, pag. 136. saith, viz. Subsequenti ætate ex censu vt colligitur facti fuerunt equites, &c. And Antiquity thought that twenty pound land was sufficient to maintaine the degree of a Knight, as appeareth in the ancient treatise De modo tenendi Parliamentum tempore Regis Ed. filii Regis Etheldredi. Where it appeareth that comitatus (to wit) an Earledome, constat ex viginti feodis vnius militis, quolibet feodo computato ad viginti libratas: Baronia constat ex 13 feodis, & 3. parte vnius feodi militis secundum computationem prædictam; Vnum feodum militis constat ex terris ad valentiam 20. l. which Antiquity I cite for that it concurreth with the act of Parliamẽt, anno 1. E. 2. de militibus by which act Census militaris the state of a Knight is measured by the value of 20. pound per annum, & not by any certaine content of acres; and with this agreeth the statute of W. 1. cap. 35 and F. N. B. fol. 82. where twenty pound of land in socage is put in equipage of a Knights fee, and this is the most reasonable estimate, for one acre may bee better than many others, so as hee which hath 680. or 800. acres of some barren land had not according to the ancient account a sufficient reuenue to maintaine the degree of a Knight, and he which had a lesse number of acres of some land of the value of 20. li. per annum, had a sufficient liuelihood in those dayes for the maintenance of a Knight. So Antiquity thought that 400. markes of land per annum was a competent liuelihood for a Baron, & 400. pounds per annũ, Ad sustinendum nomen & onus of an Earle, and of late time 800. Markes per annum of a Marquesse and 800. pound per annum of a Duke, so that their yeerely reuenue was estimated by the value and not by the content. And one plowland, carucata terræ, or a hide of land, hida terræ, (which is all one) is not of any certaine content, but asmuch as a plough can by course of husbandry plow in a yeere. And therewith agreeth Lambert verbo Hide. And a plow land may containe a messuage, wood, meadow, and pasture, because that by them the plowmen & the cattell belonging to the plow are maintained. Vide Temps E. 1. tit. Briefe 860. 4. E. 3. 47. Pl. com. in Hill and Granges case, fol. 168. Vide 6. E. 3. fol. 42. and 39. H. 6. 8. a. And venerable Beda calleth a plowland familiam a family, because it containeth necessary things for the maintenance of a family. And Prisot well saith in 35. H. 6. fol. 29. that a plow may till more land in a yeere in one Country than in another, and therefore it stands with reason, that a plowland should be lesse in one place than in another. 41. E. 3. tit. fine 40. and 13. E. 3. fine 67. A fine shall not be receiued De vna virgata terræ for the vncertainty, Vide 39. H. 6. 8. But an acre of land is certaine by the statute De terris mensuranais. Note also (Reader) that euery plowland of ancient time was of the yeerely value of fiue nobles per annum, and this was the liuing of a plowman or yeoman, and Ex duodecim carucatis constabat vnum feodum militis, which amount to 20. pound per annum. And this you may see Termino pasch. anno 3. E. 1. Coram Rogero de Seyton & sociis suis Iusticiariis apud

(f) Lib. 9. fol. 123. 124 in Lowes case.

Vide Lib. 7. fol. 33. 34. 61, 62. Neuils case.

West. Ebor. Ro. 10. Radulphus de Normanville petens in breui de medio queritur contra Lucian de Kyme quod cum ipsa teneat de ipso duas carectatas terræ in Coningston per homagium & seruitium militare, vnde duodecim carucatæ terræ faciunt vnum feodum militis pro omni seruitio, ipsa dissinxit ipsum ad faciendum sectam ad curiam suam de Thorneton in Crauen, &c.

And it is to be obserued that the relefe of a Knight and all aboue him which be noble, is the fourth part of their yeerely Reuenue, as of a Knight fiue pound, which is the fourth part of 20. pound. So Vna baronia constat ex 13. feodis militum & de 3. parte vnius feodi militis, **which amount to 400. Markes, and therefore his relefe is the fourth part of this,** viz. **100. Marks: and an Earledome consists of twenty Knights fees, which amount to 400. pound** (as before it appeareth by the said ancient Record De modo tenendi Parliamentum, &c.) **and therefore his relefe is 100. pound. And this also appeareth by the statute of** Magna Charta, **cap. 2. and by the equity of this statute, insomuch as a Marquisdome which consists of the reuenue of two Baronies which amount to 800. Markes, shall pay according to that iust proportion for his relefe 200. markes, and because a Dukedome consists of the reuenues of two Earledomes,** viz. **800. pound** per annum, **a Duke shall pay 200. for a relefe, which is also the fourth part of his reuenue, and with this agree the Records of the Exchequer.**

Note (Reader) At the time of the making of the Statute of Magna Charta, **5. 9. H. 3. there was not any Duke, Marquesse, or Viscount in England (and therefore the Statute could not make mention of them) and** Edward **the eldest sonne of King E. 3. called the** black Prince **was the first Duke in England after the Conquest, and** Robert **Earle of Oxford in the reigne of R. 2. was the first Marquesse,** Sic enim inter ordines Angliæ in sua Britannia refertur Camden vbi supra. Et titulus Marchionis serius ad nos deuenit, nec ante R. 2. tempora cuiquam delatus, ille enim Robertum Vere Oxoniæ comitem delicias suas primum Marchionem Dublinæ designauit, merumque erat honoris nomen. Hæc ille. **And before the reigne of H. 6. there was not any Viscount.** Sic enim idem Author vbi supra asserit. Post comites vicecomites ordine sequuntur, Viscounts nos vocamus; hæc vetus officii sed noua dignitatis appellatio, & H. 6. tempore ad nos primum audita, Hæc ille, Et dominus de Bello monte **was the first Viscount created by King H. 6.** Vide Cassianeum in gloria mundi parte 4. consid. 55. **that this dignity of a Viscount is of great antiquity in other Realms.**

7. H. 4. 9. 31. Ass. 30. 26. Ass. 66. 27. Ass. 52. 8. E. 3. 154.

Bracton lib. 2. 36. Item sunt quædam seruitia quæ dicuntur forinseca, quamvis sunt in carta de feoffamentis expressa & nominata, & quæ ideo dici possunt forinseca, quia pertinent ad dominum regem, & non ad dominum capitalem, nisi cum in propria persona profectus fuerit in seruitio, vel nisi cum pro seruitio suo satisfecerit domino regi, &c.

7. E. 3. 29. 11. H. 4. 7. F. N. B. 28. b. & 83. g. 3. H. 4. 16. 28. H. 6. 1. b. 39. H. 6. 38. 6. R. 2. protection 46. 19. R. 2. gard. 165. 17. H. 6. protect. 56. 7. E 4. 27. 11. H. 4. 7. 3. H. 4. 16.

¶ *Voyage Royal.* **A voyage royall is not onely when the King himselfe goeth to warre, as** Littleton **here saith, but also when his Lieutenant or Deputy of his Lieutenant goeth. And what shall be said a Voyage royall shall be adiudged in this case by the Iudges of the Common Law as an incident to Escuage, and not by the Constable and Marshall, or any other: & sic de similibus.**

There is also another kinde of Voyage royall, viz. **when one goeth with the Kinges daughter beyond sea to be married, &c. for such a voyage is for the good of the whole Realme,** (for more profit for the Realme cannot be than to make alliance with another Nation) **but of this Voyage Royall** Littleton **speaketh not here, but only of the Voyage royall to warre: so as there is a Voyage royall of warre, and a Voyage royall of peace and amity. And it is to be obserued that he that holdeth by Castle gard or coynage holdeth by Knights seruice, and yet he shall pay no Escuage, because he holdeth not to goe with the King to warre.**

Ibid. 111 Lib. Rub. in Scace. 47. 48. 19. R. 2. gard. 95. 6. R. 2. protection 46. 6. H. 3. Auowry 242. Vide Rot. Claus. 8. H. 3. & Fin. 8. H. 3. & patent. 9. H. 3. multi soluerunt scutagium pro exercit. in Walliam. memb. 30. & ante. claus. 6. H. 3. memb. 3.

¶ *En Escoce.* **In** Scotiam, **this is put but for an example, for if the tenure be to goe in** Walliam, Hiberniam, Vasconiam, Pictauiam, &c. **it is all one. See an ancient Record,** Rot. de finibus Termino Mich. 11. E. 2. **Sir** Rich. Rockesley **Knight did hold lands at** Seaton **by Serieanty to bee** Vantrarius Regis, **that is to bee the Kings fore foot man when the King went into** Gascoigne, donec per vius fuit pari solutarum precii 4. d. **that is, vntill he had worne out a paire of shoes of the price of foure pence. And this seruice being admitted to be performed when the King went to** Gascoigne **to make warre, is Knights seruice.**

¶ *Il que tient per vn fee de seruice de chiualier couient esse one le Roy per 40. iours.* **But this is to be vnderstood of a Tenant that holdeth of the King immediately, for euery man is bound by his tenure to defend his Lord, and both he and his Lord the King and his Country, and therefore if the Lord goeth not, his Tenant is excused. But yet if the tenant perauatie goeth with the King, it excuseth all the meanes.**

And it is to be obserued, that for euery pound of the ancient value of a Knights fee accounting twenty pound land, the Tenant must goe with the King two dayes, which commeth iust to 40. dayes for a whole Knights fee, by the Statute of Magna Charta **it is prouided that scutagium de cæter' capiatur sicut capi consueuit tempore Hen. regis aui nostri.**

Magna Charta cap. 37. Fleta. lib. cap. 69.

Sect.

Sect. 96.

MEs il appiert p les plees & arguments faits en vn bon plee sur briefe de Detinue de vn escript Obligatorie port per vn H. Gray, T. 7. E. 3. que ne besoigne a celuy q̄ tient per Escuage de aler ouc le Roy luy mesm̄, sil voile trouer vn auter person able pur luy conuenablement array pur le guerre, de aler ouc le Roy. Et ceo semble estre bon reason, car poit estre q̄ celuy que tient per tiels seruices est languishant, issint q̄ il ne poit aler ne chiuaucher. Et auxy vn Abbe, ou auter home de Religion, ou feme sole q̄ tient per tiels seruices, ne doit en tiel cas aler en proper person. Et Sir W. Herle, adonque chiefe Justice d̄ common bank, disoit en tiel plee, que escuage ne serra graunt, mes lou le Roy alast luy mesme en son proper person. Et fuist demurre en iudgement en mesme le plee, le quel les xl. iours serront accompts de le primer iour del mu-

BVt it appeareth by the pleas and arguments made in a plea vpon a Writ of detinue of a writing obligatorie brought by one *H. Gray*, *T. 7. E. 3.* that it is not needfull for him which holdeth by Escuage to goe himselfe with the King if hee will finde another able person for him conueniently arrayed for the warre to goe with the King. And this seemeth to be good reason. For it may be that he which holdeth by such seruices is languishing, so as hee can neither goe nor ride. And also an Abbot or other man of Religion, or a feme sole, which hold by such seruices ought not in such case to goe in proper person. And Sir *William Herle* then chiefe Iustice of the common place said in this plea, that Escuage shall not bee granted but where the King goes himselfe in his proper person. And it was demurred in iudgment in the same plea, whither the 40. dayes should bee accounted from the first day of

CTR. 7. E. 3. &c. This is the first booke at large that our Author hath cited and it is to be obserued that this point is not debated in the said booke, but onely it is there admitted, and yet is good authority in law, for our Author saith that it appeareth by this booke, now both by Littleton himselfe, and by the booke of 7. E. 3. it is apparant that albeit the tenure is that hee which holdeth by a whole Knights fee ought to be with the King, &c. to doe a corporall seruice, yet he may finde another able man to doe it for him. T. 7. E. 3. fol. 29.

By the Statute of Magna Charta, cap. 20. it is prouided, that no Knight that holdeth by Castle-gard shall bee distreyned to giue monie for the keeping of the Castle, Si ipse eam facere voluerit in propria persona sua vel per alium probum hominem faciet si ipse eam facere non possit propter rationabilem causam.

Some haue thought that he that holds by escuage is taken by the equity of this statute that speaketh onely of Castle-gard, but it is holden that this statute is but an affirmance of the common law. For where that Act saith, (propter rationabilem causam) that reasonable cause is referred to the tenants owne discretion and choice, and the cause is not materiall or issuable no more than in the case that Littleton here putteth as hereafter appeareth. And I would aduise our student, that when he shall be enabled and armed to set vpon the peere bookes, or reports of Law, that hee bee furnished with all the whole course of the Law, that when hee heareth a case vouched and applyed either in Westminster Hall, (where it is necessary for him to be a diligent hearer, and obseruer of cases of law) or at readings or other exercises

cises of learning, he may find out and reade the case so touched, for that will both fasten it in his memory, and bee to him as good as an exposition of that case, but that must not hinder his timely and orderly reading, which (all excuses set apart) he must binde himselfe vnto, for there bee two things to be auoided by him, as enemies to learning, præpostera lectio, and præpropera praxis. But let vs now heare what our Author will say:

ster de host le Roy, fait per les Commons, & per commandement le Roy, ou de la tour que le Roy primes entra en Escoce: Ideo Quære de hoc.

the muster of the Kings host made by the Commons, and by the commandement of the King, or from the day that the King first entred into *Scotland*. Therefore inquire of this.

¶ *Et ceo semble bone reason, &c.* Here Littleton shweth three reasons wherefore the Tenant should not be constrained to doe his seruice in person.

First, It may be the tenant is sicke, so as he is neither able to goe nor ride. And euer such construction must be made in matters concerning the defence of the Realme or common good, as the same may be effected and performed. To the former disability may be added where a Corporation aggregate of many, as Deane and Chapter, Maior and Communalty, &c. or an Infant being a Purchaser, for these also must finde an able man. But it may be obiected that in these particular Cases the Tenant might finde a man, but not when hee himselfe is able without all excuse or impediment. To this it is answered, that Sapiens incipit à fine. And the end of this seruice is for defence of the Realme, and so it be done by an able and sufficient man, the end is effected.

Secondly, Seeing there are so many iust excuses of the Tenant, it were dangerous, and tending to the hindrance of the seruice, if these excuses should be illuable, Multa in iure communi contra rationem disputandi pro communi utilitate introducta sunt.

Lastly, both Littleton and the Booke in the seuenth of Edward the third, giueth the Tenant power, without any cause to bee shewed to finde an able and sufficient man, and oftentimes Iura publica ex priuato promiscue decidi non debent.

¶ *Vn Abbe ou auter homé de religion.* Note that if the King had giuen Lands to an Abbot and his Successors to hold by Knights seruice, this had beene good, and the Abbot should doe homage and finde a man, &c. or pay Escuage, but there was no Wardship or relefe or other incident belonging thereunto. And though the Law saith that this was a Mortmaine, that is, that they held fast their Inheritances, yet if the Abbot with the assent of his Couent, had conueyed the land to a naturall man and his heires, now Wardship and Relefe and other incidents belonged of common right to the tenure. And so it is, if the King giue Lands to a Maior and Communalty, and their Successors to be holden by Knights seruice. In this case the Patentees (as hath beene said) shall doe no homage, neither shall there be any Wardship or relefe, only they also shall finde a man, &c. or pay Escuage. But if they conuey ouer the lands to any naturall man and his heires, now homage, ward, marriage, and relefe, and other incidents belong hereunto. And yet this possibility was remota potentia, but the reason hereof is, Cessante ratione legis cessat ipsa lex, the reason of the immunity was in respect of the Body politique, which by the conueyance ouer ceaseth, which is worthy of obseruation.

56. b.

And it is to be obserued, that euery Bishop in England hath a Baronie, and that Barony is holden of the King in Capite, and yet the King can neither haue wardship or relefe.

If two Ioyntenants be of Land holden by Knights Seruice, if one goeth with the King, it sufficeth for both, and both of them cannot be compelled to goe, for by their tenure one man is only to goe.

6. H. 3. Anowry 242. F.N.B. 83. 84.

If the Tenant perauaile goeth, it dischargeth the Meine, for one tenancie shall pay but one Escuage.

¶ *Ou auter home de Religion.* Here this word (Religion) is taken largely, viz. not only for regular, or dead persons, as Abbots, Monkes, or the like; But for secular persons also, as Bishops, Parsons, Vicars, and the like, for neither of them are bound to goe in proper person. For nemo militans Deo implicet' secularibus negotiis.

¶ *Languishant.* So it may be said of an Idcot, a mad man, a leper, a man maimed, blind, deafe, of decrepit age, or the like.

¶ *Ou femme sole.* Seeing that a feme sole, that cannot performe Knights seruice, may serue by deputy, it may bee demanded wherefore an heire male being within the age of 21. yeeres

peeres may not serue also by Deputy, being not able to serue himselfe.

To this it is answered, that in cases of Minoritie, all is one to both sexes, viz. if the heire male be at the death of the Ancestor vnder the age of one and twenty, or the heire female vnder the age of 14. they can make no Deputy, but the Lord shall haue wardship as an incident to the tenure: therefore Littleton is here to be vnderstood of a feme sole of full age, and seised of Land holden by Knights Seruice either by purchase or descent.

¶ *Couenablement arraie pur le guerre.* So as here are foure things to be obserued.

First, (as hath beene said) that he may finde another.

Secondly, that he that is found must be an able person.

Thirdly, He must be armed at the costs and charge of the Tenant, and herein is to be noted, Quod non definitur in iure, with what manner of Armor the Souldier shall be arrayed with, for time, place, and occasion doe alter the manner and kinde of the Armour.

Fourthly, He must haue such Armor, as shall be necessary, and so appointed in readinesse.

Ferdwit is a Saxon word & significat quietanciam murdri in exercitu. Worscott is an old English word and signifieth Liberum esse de oneribus armorum. Fleta lib.1.cap.42.

It is truly said, Quod miles hæc tria curare debet, corpus vt validissimum & perniciissimum habeat, arma apta ad subita imperia, cætera Deo, & Imperatori curæ esse. Liuius.

Sapiens non semper it vno gradu, sed vna via, non se mutat sed aptat. Qui secundos optat euentus, dimicet arte non casu. In omni conflictu non tam prodest multitudo quam virtus. Vegetius.

Est optimi ducis scire & vincere, & cedere prudenter tempori. Multum potest in rebus humanis occasio, plurimum in bellicis. Polybius.

Quid tam necessarium est quam tenere semper arma quibus tectus esse possis. But I will take my leaue of these excellent Authors of Art Military, and referre them to those that professe the same, and will returne to Littleton. Vegetius.

¶ *Muster.* I finde this word in the Statute of 18.H.6. cap.19. and the ancient Military Order is worthy of obseruation, for before and long after that statute, when the King was to be serued with Souldiers for his warre, a Knight or Esquire of the Country, that had Reuenues, Farmors and Tenants would couenant with the King by Indenture inrolled in the Exchequer to serue the King for such a terme with so many men (specially named in a List) in his warre, &c. an excellent institution that they should serue vnder him, whom they knew and honoured, and with whom they must line at their returne, these men being mustered before the Kings Commissioners, and receiuing any part of their wages, and their names so recorded, if they after departed from their Captaine within the Terme, contrary to the forme of that Statute, it was felony. But now that Statute is of no force, because that ancient and excellent forme of military course is altogether antiquated: but later Statutes haue prouided for that mischiefe. Lib.6.fol.27. the souldiers case.

To muster is to make a shew of Souldiers well armed and trained before the Kings Commissioners in some open field. Vbi se ostendentes præludunt prælio. In Latine it is censere, seu lustrare exercitum.

By the law before the Conquest Musters and shewing of Armour should be Vno eodem die per vniuersum regnum, ne aliqui possint arma familiaribus & notis accommodare, nec ipsi illa mutuo accipere, ac iustitiã Domini Regis defraudare, & Dominum Regem & Regnum offendere. Lamb.fol.135.b.

Concerning the point in Law, demurred in iudgement, in the seuenth of Edward the third, here mentioned by our Author: The Law accounteth the beginning of the forty dayes after the King entreth into the forraine Nation, for then the warre beginneth, and till he come there, hee and his host are said to goe towards the warre, and no Militarie seruice is to bee done, till the King and his Host come thither.

¶ *Sir william Herle.* A famous Lawyer constituted Chiefe Iustice of the Common Pleas by Letters Patents dated, 2. die Martii anno 5. E. 3. It appeareth by Littleton, and by the Record that hee was a Knight, against the conceit of those, that thinke, that the chiefe Iustices of the Court of Common Pleas were not knighted till long after.

Our Student shall obserue that the knowledge of the Law is like a deepe well, out of which each man draweth according to the strength of his vnderstanding. Hee that reacheth deepest, hee seeth the amiable, and admirable secrets of the Law, wherein, I assure you, the Sages of the Law in former times, (whereof Sir William Herle was a principall one) haue had the deepest reach. And as the Bucket in the depth is easily drawne to the vppermost part of the water, (for Nullum elementum in suo proprio loco est graue) but take it from the water, it cannot be drawne vp but with great difficultie. So albeit beginnings of this study seeme difficult, yet when the Professor of the Law can diue into the depth, it is delightfull, easie, and without any heauy burthen, so long as he keepe himselfe in his owne proper element.

¶ *Iustice.*

Glanuile lib. 2. cap. 6. &c.

¶ *Iustice.* In Glanuil he is called Iustitia in ipso abstracto, as it were Justice it selfe, which appellation remaines still in English and French, to put them in minde of their dutie and functions. But now in legall Latine they are called Iusticiarii tanquam iusti in concreto, and they are called Iusticiarii de Banco, &c. and neuer Iudices de Banco, &c.

¶ *Comon Banke.* Banke is a Saxon word, and signifieth a Bench or high seat, or a tribunall and is properly applyed to the Justices of the Court of Common Pleas, because the Justices of that Court set there as in a certaine place: for all Writs returnable into that Court are Coram Iusticiariis nostris apud Westmon. or any other certaine place where the Court set, and Legall Records tearme them Iusticiarii de Banco. But Writs returnable into the Court called the Kings Bench, are Coram nobis (i. Rege) vbicunque fuerimus in Anglia. And all iudiciall Records there are stiled coram Rege. But for distinction sake it is called the Kings Bench, both because the Records of that Court are stiled (as hath beene said) Coram Rege, and because Kings in former times haue often personally set there. For the antiquity of the Court of Common Pleas they erre, that hold that before the Statute of Magna Charta there was no Court of common Pleas, but had his Creation by, or after that Charter: for the learned know, that in the six and twentieth yeere of Edward the Third, the Abbot of B. in a Writ of Assize brought before the Justices in Eire claimed Conusance and to haue Writs of Assize, and other originall Writs out of the Kings Court by prescription, time out of minde of man, in the reignes of Saint Edmond, and Saint Edward the Confessor before the Conquest. And on the behalfe of the Abbot were shewed diuers allowances thereof in former times in the Kings Courts, and that King Henry the first confirmed their plages, and that they should haue Conusance of Pleas, so that the Justices of the one Bench, or the other should not intermeddle. And the Statute of Magna Charta, erecteth no Court, but giueth direction for the proper iurisdiction thereof in these words. Communia Placita non sequantur Curiam nostram, sed teneantur in aliquo certo loco. And properly the Statute saith, non sequantur, for that the Kings Bench did in those dayes follow the King vbicunque fuerit in Anglia, and therefore enacteth that Common Pleas should be holden in a Court resident in a certaine place. In the next Chapter of Magna Charta (made at one and the same time) it is prouided: Et ea quæ per eosdem (s. Iusticiarios itinerantes (propter difficultatem aliquorum articulorum terminari non possunt, referantur ad Iusticiarios nostros de Banco, & ibi terminentur. And in the next to that, Assisæ de vltima præsentatione semper capiantur coram Iusticiariis de Banco, & ibi terminentur. Therefore it manifestly appeareth, that at the making of the Statute of Magna Charta, there were Iusticiarii de Banco, which all men confesse to be the Court of Common Pleas. And therefore that Court was not erected by or after that Statute. For the Authority of this Court, it is euident by that which hath beene said, that it hath iurisdiction of all Common Pleas. But let vs returne to Littleton.

26. Ass. p. 24. 4 E. 3. fo. 19. Bracton lib. 3. fol. 105. b. Britton fol. 1. & 2. Fleta lib. 2. cap. 2. Mirror. cap. 5. sect. 1. Fortescue cap. 51. See in the Preface to the third part of my Reports.

¶ *Demurre en iudgement.* A Demurrer commeth of the Latine word demorari to abide, and therefore he which demurreth in Law, is said, he that abideth in Law, Moratur, or demoratur in lege. Whensoeuer the Counsell learned of the party is of opinion, that the Count or Plea, of the aduerse party is insufficient in Law, then he demurreth or abideth in Law, and referreth the same to the iudgment of the Court, and therefore well saith Littleton here, demurre en iudgement, the words of a Demurrer being Quia narratio, &c. materiaque in eadem contenta minus sufficiens in lege existit, &c. and so of a Plea, Quia Placitum, &c. materiaque in eodem contenta minus sufficiens in lege existit, &c. vnde pro defectu sufficientis narrationis siue placiti, &c. petit iudicium, &c. But if the Plea be sufficient in Law, and the matter of fact be false, then the aduerse partie taketh issue thereupon, and that is tryed by a Jury, for matters in Law are decided by the Judges, and matters in fact by Juries, as elsewhere is said more at large.

6. 145. 9

Now as there is no issue vpon the fact, but when it is ioyned betweene the parties, so there is no Demurrer in Law, but when it is ioyned, and therefore when a Demurrer is offered by the one party as is aforesaid, the aduerse party ioyneth with him, (for example) saith, Quod Placitum prædictum, &c. materiaque in eodem contenta bonum & sufficiens in lege existunt, &c. & petit iudicium, and thereupon the Demurrer is said to be ioyned, and then the Case is argued by Counsell learned of both sides, and if the points be difficult, then it is argued openly by the Judges of that Court, and if they or the greater part concurre in opinion, accordingly iudgement is giuen, and if the Court be equally diuided, or conteine great doubt of the case, then may they adiourne it into the Exchequer Chamber, where the case shall be argued by all the Judges of England, where if the Judges shall bee equally diuided, then (if none of them change their opinion) it shall be decided at the next Parliament by a Prelate, two Earles, and two Barons which shall haue power and commission of the King in that behalfe, and by aduice of themselues, the Chancellor, Treasurer, the Justices of

Mirror. cap. 5. sect. 2. Fleta lib. 2. cap. 54.

Vid. Brack. lib. 3. fo. 332. b.

14. E. 3. cap. 5. Statut. 1.

the

the one Bench and the other, and other of the Kings Councell, as many and such as shall seeme conuenient, shall make a good iudgement, &c. And if the difficulty be so great as they cannot determine it, then it shall be determined by the Lords in the vpper house of Parliament. See the statute, for it extends not onely to the case aboue said, but also where iudgements are delayed in the Chancery, Kings bench, Common bench, and the Exchequer, the Justices assigned, and other Justices of Oyer and Terminer, sometime by difficulty, sometime by diuers opinions of Justices, and sometime for other causes. (a) Before which Statute, if iudgements were not giuen by reason of difficulty, the doubt was decided at the next Parliament, (which then was to be holden once euery yeere at the least) (b) Si autem talia nunquam prius euenerint, & obscurum & difficile sit eorum iudicium, tunc ponatur iudicium in respectum vsque ad magnam curiam, vt ibi per concilium curiæ terminentur. But hereof thus much shall suffice. (c) He that demurreth in Law confesseth all such matters of fact as are well and sufficiently pleaded. If there be a demurrer for part and an issue for part, the more orderly course is to giue iudgement vpon the demurrer first, but yet it is in the discretion of the Court to try the issue first if they will. After demurrer ioyned in any Court of Record, the Iudges shall giue iudgment according as the very right of the cause and matter in Law shall appeare, without regarding any want of forme in any Writ, Returne, Plaint, Declaration, or other pleading, Proces, or course of proceeding, except those only which the party demurring shall specially and particularly set downe and expresse in his demurrer. (a) Now what is substance and what is forme you shall reade in my Reports.

And in some cases a man shall alleage speciall matter, and conclude with a Demurrer, (b) as in an action of trespasse brought by I.S. for the taking of his horse, the defendant pleads that he himselfe was possessed of the horse vntill he was by one I.S. dispossessed, who gaue him to the plaintife, &c. the plaintife saith that I.S. named in the barre, and I.S. the plaintife were all one person, & not diuers; and to the plea pleaded by the defendant in the manner, he demurred in Law, and the Court did hold the plea and demurrer good, for without the matter alleaged he could not demurre. Now as there may be a demurrer vpon counts and pleas, so there may be of Aid prior, Voucher, Receit, waging of Law, and the like. (c) By that which hath beene said it appeareth, that there is a generall demurrer, that is, shewing no cause, and a speciall demurrer which sheweth the cause of his demurrer. Also by that which hath beene said, there is a demurrer vpon pleading, &c. and there is also a demurrer vpon euidence. (d) As if the plaintife in euidence shew any matter of Record, or Deeds, or Writings, or any sentence in the Ecclesiasticall Court, or other matter of euidence by testimony of witnesses, or otherwise, whereupon doubt in Law ariseth, and the defendant offer to demurre in Law thereupon, the plaintife cannot refuse to ioyne in demurrer no more than in a demurrer vpon a count, replication, &c. and so E conuerso, may the plaintife demurre in Law vpon the euidence of the defendant.

But if euidence for the King in an Information or any other suit be giuen, and the Defendant offer to demurre in Law vpon the Euidence, the Kings counsell shall not be inforced to ioyne in Demurrer: but in that case, the Court may direct the Jury to finde the speciall matter.

¶ *En iudgement.* For the signification of this word, Vide Sect. 366.

Ror. Parlia. 14. E. 3. nu. 31. a proceeding in Sir John Stanions case vpon difficultie in the Court of Common Pleas.
Vide Britton fol. 41.
21. E. 3. 37. 38.
39. E. 3. fo. 1. 21. 35.
40. E. 3. 34. 13. H. 4. 3. 4.
(a) 4. E. 3. ca. 14.
(b) Bracton lib. 1. cap. 2. nu. 7. Brit. fol. 41.
1. li. 3. 7. 8. 2. E. 3. 6. 7.
(c) 27. E. 3. 50. b.
47. E. 3. 13. 14. 5. H. 7. 1. 13. E. 4. 7. b. Pl. Com. 85. 411. 172.
48. E. 3. 15. 2. R. 2. inquest. 2. 38. E. 3. 15. 11. H. 4. 5. 75. 3. E. 4. 2.

(a) Lib. 3. fol. 57. Linc. Coll. case. Lib. 5. fol. 74. Wymeks case. Lib. 10. fol. 88. vsque 98. Doctor Leyfields case.
(b) 13. E. 4. 7. 31. E. 3. estoppel. 244. 33. H. 6. 9. 10. 22. E. 4. 30. 1. H. 7. 21.

(c) 14. H. 4. 31. 37. H. 6. 6.

(d) Lib. 5. fol. 104. a. Bakers case.

(e) 38. H. 8. Dyer. 53.

Sect. 97.

¶ ET apres tiel voyage royal en Escoce, il est communement dit, que p authoritie de Parliament lescuage serra assesse & mis en certaine, s. certeine sume dargent, quant chescun que tient per entier fee de seruice de chiualer, q̃l ne fuit

And after such a voyage royall into Scotland, it is commonly said, that by authority of Parliament, the escuage shal be assessed and put in certaine, s. a certaine summe of money; how much euery one which holdeth by a whole Knights fee,

¶ *Apres voiage royal, &c. il est communement dit, que per Authoritie de Parliament escuage serra assesse.* Nota, here is a secret of Law included, that albeit Escuage incertaine be due by Tenure, yet because the assessement thereof concerned so many and so great a number of the subiects of the Realme, it could not be assessed by the King or any other but by Parliament:

(a) and

(a) and this was by the common Law.

(b) No Escuage was assessed by Parliament since the reigne of Edward the second, and in the eight yeere of his reigne Escuage was assessed.

If the Tenant goeth with the King, and dieth in exercitu, in the Host or Army, he is excused by Law, and no Escuage shall bee demanded.

And it is to bee obserued, that if hee that holds of the King by Escuage, goeth, or findeth another to goe for him with the King, &c. then hee shall haue Escuage of his Tenants that hold of him by such seruice, which must bee assessed by Parliament.

But if the Kings Tenant goeth not with the King, then hee shall pay for his default Escuage, and shall haue no Escuage of his Tenants. Richard the second making a voyage Royall into Scotland, at the petition of his Commons pardoned the payment of Escuage.

(a) 13. H. 4. 5.

(b) 8. H. 3. Rot. Claus. & Rot. finium. memb. 30. & ante.

Staff. p. 14. E. 1. debanco.

F.N.B. 84.

Bract. lib. 2. 36. a.

F.N.B. 84.

Cont. Mad. Hist. 469
Rot. Parl. 9. R. 2. nu. 40.

per luy meſme, ne per vn auter pur luy oue le Roy, paiera a ſon Seignior de que il tient la Terre per eſcuage. Sicome mittomus, que il fuit ordaine per authoritie de la Parliament, que cheſcun que tient per entire fee d Seruice de chiualer, que ne fuit oue le Roy, payera a ſon Seignior 40. S. donque celuy que tient per moitie dun fee de chiualer ne payera a ſon Seignior forſque xx. S. & celuy que tient p la quart part de fee de chiualer ne payera forſque x. S. & ſic que pluis, pluis; & que meins, meins.

who was neither by himſelfe not by any other, with the King, ſhall pay to his Lord of whom he holds his Land by Escuage. As put the caſe that it was ordained by the authority of the Parliament, That euery one which holdeth by a whole Knights fee, who was not with the King, ſhall pay to his Lord forty ſhillings; then hee which holdeth by the moity of a Knights fee, ſhall pay to his Lord but twenty ſhillings, and hee which holdeth by the fourth part of a Knights fee, ſhall pay but x. s. and hee which hath more, more; and which leſſe, leſſe.

Section 98.

Vide Sect. 120.

CA *Scuns teignont per cuſtome, &c.* Nota, that Escuage is directed by cuſtome.

15. E. 2. tit. Auow. 215. 26. Aſſ. 65. 30. E. 3. 23. b. Lib. 4. fol. 88. in Luttrels Caſe.

CMes auterment eſt de *Eſcuage certaine.* Here it appeareth, that Escuage is twofold, viz. Escuage incertaine, whereof Litt. here ſpeaks, and eſcuage certaine, quemadmodum incertitudo ſcutagii facit ſeruitium militare, ita certitudo ſcu-

CEt aſcuns teignont per la cuſtome que ſi leſcuage courge per authoritie de Parliament a aſcun ſumme de money, que ils ne paieront forſque la moitie de ceo, & aſcuns teignont que ils ne payeront forſque le quart part de ceo. Mes pur ceo que leſcuage que ils paieront eſt non certain, pur ceo que neſt certaine coment le Parliament

AND ſome hold by the cuſtome, that if Escuage bee aſſeſſed by authoritie of Parliament at any ſumme of money, that they ſhal pay but the moity of that ſumme, and ſome but the fourth part of that ſumme. But becauſe the Escuage that they ſhould pay is vncertaine, for that it is not certaine how the Parliament will aſſeſſe the eſcuage, they hold by Knights ſer-

aſſeſſera

assesseras lescuage eut teign ont per seruice de Chiualer. Mes ouerment est de lescuage certaine, de q̄ serra parle en le tenure de Socage. Inf. 120

nice. But otherwise it is of Escuage certaine, of which shall bee spoken in the Tenure of Socage.

tegli fanit Scutagium. But more of this in the Chapter of Socage, sect. 120.

¶ *Per Parliament.* Of the Antiquity and Authority of this Court, see Sect. 164.

Sect. 99.

¶ ET si hõe parle generalment descuage, il serra entendue q̄ le common parlance descuage noncertaine, que est Seruice de chiualer, & tiel escuage trait a luy homage, & homage trait a luy Fealtie, car fealtie est incident a chescun manner de seruice forsque a le Tenure en Frankalmoigne, come serra dit apres en le Tenure de Frankalmoigne. Et issint il que tient per Escuage, tient q̄ homage fealtie & Escuage.

AND if one speake generally of Escuage, it shalbe intended by the common speech of Escuage incertaine, which is Knights seruice: And such Escuage draweth to it Homage, & Homage draweth to it Fealtie; for Fealtie is incident to euerie manner of seruice, vnlesse it be to the Tenure in Frankalmoign, as shall bee said afterward in the Tenure of Frankalmoigne. And so he which holdeth by Escuage, holds by Homage, Fealtie and Escuage.

¶ *Et si home parle generalment descuage il serra intend per le common parlance descuage non certain.* Verba æquiuoca & in dubio posita intelliguntur in digniori & potentiori sensu. Tenure in expire ex vi termini is a tenure in Grosse, and it may be holden of a Subiect, but being spoken generally, it is secundum excellentiam, intended of the King, for he is Caput Reipublicæ.

Entendments en Ley Sect. 100. 110. 367. 377. 393. 400. 462. 403. 5. E. 2. Ref. 165. 20. H. 6. 13. 21. H. 3. 8. 37. H. 39. 13. H. 4. 4. 6. El. Dyer 236. 20. E. 4. 11. 32. E. 3. Gard. 31.

Brit. fo. 163.

¶ *Et ciel Escuage trait a luy homage & homage trait a luy Fealtie, car Fealtie est incident a chescun manner de seruice forsque a tenure en Frankalmoigne.*

40 E. 3. 21. El. 7. 4.

Sect. 100.

This is gathered by the effects of their Tenure, for essences are found out by properties, fountaines by riuers, and causes by effects: for amongst others, the Lord shall haue Escuage. Of their Tenure, &c. as it followeth.

¶ ET est a noter. Que quant escuage est tielment assesse per authoritie de Parliament chescun Seignior de que le terre est tenus, per escuage, auera escuage issint assesse per Parliament pur tels que il est in-

AND it is to be vnderstood, that when Escuage is so assessed by authoritie of Parliament, euerie Lord of whom the land is holden by Escuage, shall haue the Escuage so assessed by Parliament, because it is intended by the Law, That at

tenous p la Ley, q̃ al cõmencemẽt tiels tenemẽts fuer dones p les Sñrs a les tenants de tener per tieir seruices a defender lour Sñrs, auxy bien come le Roy, & mitter en quiet lour Sñrs & le Roy, de les Scotes auantdits.

the beginning such tenements were given by the Lords to the tenants to hold by such seruices to defend their Lords aswell as the King, and to put in quiet their Lords and the King from the Scots aforesaid.

Sect. 101.

F. N. B. 84. Register, 88. de Scutagio habendo.

¶ *Les seigniors auerront lescuage, &c.* This is euident.

¶ *Briefe le Roy.* This commeth of the Latine word Breue.

Fitzh. in his Preface to his N. B. saith of them, that they be those foundations whereupon the whole Law doth depend.

(a) Bracton describeth a Writ thus, Breue quidem cum sit formarum ad similitudinem regulæ juris, quia breuiter & paucis verbis intentionem proferentis exponit & explanat sicut regula iuris rem quæ est breuiter enarrat, non tamen ita breue esse debeat quin rationem & vim intentionis contineat.

(a) Bracton lib. 5. fol. 413. Fleta lib. 2. cap. 12. Britton fol. 122. 227.

Of Writs some be original, breuia originalia, and some be iudiciall, breuia judicialia.

Also of Originals, quædam sunt formata sub suis casibus & de cursu, & de communi consilio totius regni concessa & approbata, quæ quidem nullatenus mutari poterint absque consensu & voluntate eorum; & quædam sunt Magistralia, & sæpe variantur secundum varietatem casuum, factorũ & querelarum, as for example, Actions vpon the case which varie according to the variete of euerie mans case, and the like, and these being not of course, the masters being learned men did make: Item breuium originalium alia sunt realia, alia personalia, alia mixta. Item breuium originalium, alia sunt patentia siue aperta, & alia clausa. Certaine it is that the original writs are so artificially and richly compiled, as there is nothing redundant or wanting in them, of which an honourable Secretaris of State once said, that it was not possible to comprehend so much matter, so perspicuously in fewer words: of all these kinds of writs you shall read plentifully in the Register whereof Littleton maketh mention in this place, and also in Fitz. N. B.

¶ *Sicome appiert per le Register.* Register, is the name of a most ancient booke and of great authoritie in Law, containing all the originall writs of the Common Law, & which booke is more in the possession of the students, and containeth also Breuia judicialia quæ sæpius variantur secundũ varietatem placitorũ proponentis & respondentis.

Bracton vbi supra. Britton vbi supra. Regist. 88. F. N. B. 84.

Also it appeareth by y Register that y King shall haue Escuage of his tenants which hold of him as of a Mannor which be holden in ward, or by reason of a Mannor of the Honour.

F. N. B. 84.

And so shall a common person, if he hath an estate for life or for yeares of a Seigniorie.

Sect.

Les Seigniors auerront lescuage de lour tenants. Et les Seigniors en tiel case purront distrein pur lescuage issint assesse, ou ils en aſcuns cases purront aũ dre le roy, direct as Viscots de ñ les Counties, &c. de leuier tiel escuage pur eux, sicome appiert p le Register. Mes ỳ tiels tenants queux teignont per escuage de Roy, qui ne fuerent oue le roy en Escoce, le Roy meſme auera lescuage.

And because such tenements came first from the Lords, it is reason that they should haue the Escuage of their Tenants. And the Lords in such case may distrein for the Escuage so assessed, or they in some cases may haue the Kings Writs directed to the Sheriffes of the same Counties, &c. to leuie such Escuage for them, as it appeareth by the Register. But of such tenants as hold of the King by Escuage which were not with the King in Scotland, the King himselfe shall haue the Escuage.

Sect. 102.

¶ Item en tiel cas auandit, lou le Roy face vn voyage royall en Escoce, & lescuage est assesse per Parliament, si le Sñr distreine son tenant que tient de luy per seruice dentier fee de Cheualer pur lescuage issint assesse, &c. & le tenant pleede, & voit auerrer que il fuit oue le Roy en Escoce, &c. per xl. iours, & le Seignior voit auerrer le contrarie, il est dit, que il serra trie per le certificat del Marshall del host le Roy en escript south s seale q̃ serra mis a les Justices.

Item, in such case aforesaid, where the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliamẽt, if the Lord distraine his tenant that holdeth of him by seruice of a whole Knights fee, for the Escuage so assessed, &c. and the tenant pleadeth and will auer that hee was with the King in Scotland, &c. by 40. dayes, and the Lord will auerre the contrarie, it is said that it shall bee tried by the certificat of the Marshall of the Kings host in writing vnder his seale, which shall be sent to the Iustices.

¶ *Et voit auerrer, que il fuit oue le Roy en Escoce per 40. iours, &c.* (a) *Il est dit que il serra trie per le certificat del Marshall.* This is a triall appointed by the Law, Ne curia regis deficeret in Iustitia exhibenda. (b) Herewith agreeth the Register, where the Marshall is called Constabularius exercitus nostri.

(a) 2.E.4.11.4.E.4.10. 21.E.4.10. F.N.B.85. 11.H.7.5. Lib.9. fol.32. Case de Strat. Marc.

(b) Regist.88. F.N.B.84. 2.E.4.1.4.E.4.10. 9.H.4.3. 11.H.7.5. 21.H.6.30. 33.H.6.1.45.

¶ *Marshall de host le roy.* Marescallus exercitus, in Saxon Marischalk, i. equitum magister. This word Marshall is either deriued of Mars or of Marc an horse and schalc which signifieth in the Saxon tongue, a Master or Gouernor. (c) In the Lawes before the conquest it is said, Marescalli exercitus seu ductores exercitus Heretoches p Anglos vocabantur, illi ordinabant acies densissimas in prœliis & alas constituebant prout decuit, & prout ei mélius visum fuerit ad honorem coronæ & ad vtilitatem regni. (d) And here it is to be obserued, that his Certificate in this case is a triall in Law. I read of six kindes of Certificates allowed for trials by the Common Law; the first whereof Littleton here speaketh of, in time of warre out of the Realme. 2. In time of peace out of the Realme: (e) As if it be alleaged in auoydance of an Outlawrie, that the defendant was in prison at Burdeaux in the seruice of the Maior of Burdeaux, it shall be tried by the Certificate of the Maior of Burdeaux. 3. For matters within the Realme, (f) the Custome of London shall be certified by the Maior and Aldermen by the mouth of the Recorder. 4. By Certificate of the Sheriffe vpon a Writ to him directed (g) in case of priuiledge if one be a Citizen or a Forreiner. 5. Triall of Records by Certificate of the Iudges in whose custody they are by Law. All these be in tempozall causes. 6. In causes Ecclesiasticall, as loyaltie of marriage, generall bastardie, excommengement profession. These and the like are regularly to be tried by the Certificate of the Ordinarie.

(c) Lamb. fo. 136.

(d) 2.E.4.1.b. 4.E.4.10. 23.E.4.47. F.N.B.85.

(e) 4.E.4.10. Rep. 9. fo: 31.

(f) 5.E.4.30. 21.E.4.16.

(g) 10.H.6.10.

N. Parsons, Dr. Dominici[illegible] committed for A. or Willy[illegible] proued or not: the one not certified by y ordinary but tried p Pays. Rep. 9. fol. 40 & 41.

And there be diuers other trialls allowed by the Common Law, than by a Iurie of 12. men, which you may read at large in the ninth Booke of my Reports, fol. 30, 31. &c. in the case of the Abbot of Strata Marcella, which are as plainly set downe there, as they can bee here: and in this case, if the triall should not be by Certificate, it should want triall, which should bee inconuenient; Onely in this place I will adde something of a forreine triall, which I finde not in any of the Treatises lately published against single combats, because it may deterre men from that vngodly and vnlawfull kinde of reuenge, whereupon many murders haue ensued, and preuent all hope of impunitie for default of triall in that case.

If a subiect of the King bee killed by another of his subiects out of England in any forreine countrey, the wife or he that is heire of the dead may haue an appeale for this murder or homicide before the Constable and the Marshall. Who sentence is vpon testimony of witnesses or combat. And accordingly where a subiect of the King was slaine in Scotland by

Stat. de 1.H.4.cap.14. 13.H.4. fol.5. Vide Rot. Parliam. 8.H.6. nu.38. Stanf. pl. Cor. fo.65.

others of the Kings subiects, the wife of the dead had her appeale therefore before the Constable and the Marshall. And so it was (*) resolued in the reigne of Queene Elizabeth in the case of Sir Francis Drake who stroke off the head of Dowtie, in partibus transmarinis, that his brother and heire might haue an Appeale, Sed Regina noluit constituere Constabularium Angliæ, &c. & ideo dormiuit appellum.

(*) Anno 25 Eliz. Hutton 35.C

If a man be mortally wounded in France, and dieth thereof in England, it is said that an Appeale doth lye vpon the said Statute, for it is not punishable by the Common Law, and the proceeding there (as hath beene said) is vpon witnesses or combat, and not by Iurie, and the mortall wound was giuen out of the Realme.

By 12 Ca. 2. 24. Escuage was abolished.

CHAP. 4. Sect. 103.

Knights Seruice.

SEruice de Chiualer: Nota, it appeareth by (a) the Register, that it is (b) said vnum feodum militis, and not feodum vnius militis, as it was said, (c) by some of old, and so duo feoda militis, &c. and sometime these fees are called feoda militaria. Our Author hauing before treated of Homage, Fealtie and Escuage, now commeth to Knights Seruice it selfe. In Domesday it is thus recorded, Episcop. Baiocensis ille qui tenet de Modardo reddit ei 50. s. & seruitium vnius militis.

(a) Glanuil lib. 7. cap. 10.
(b) Regist. 2. 30. E. 3. 24.
(c) Glanuil lib. 7. cap. 14.
(d) Glanuil. lib. 7. c. 9. & 6. Fleta lib 1. cap. 8. Bracton lib. 2. fol. 85. Britton fol. 162. & fol. 28. & 95. Ockam in diuersis locis. Mirror cap. 1. sect. 3. Sud. Diton.

Chiualer. i. Eques, Knight is a Saxon word, and by them written, Cnite, Chiualer taketh his name from the horse, because they alwayes serued in warres on horsebacke. The Latines called them Equites, the Spaniards, Caualleroes; the Frenchmen, Chiualiers; the Italians, Cauallieri; and the Germanes, Reiters, all from the horse. It is necessarie to bee seene by what names this seruice of a Knight is called. It is called (e) Seruitium forinsecum quia pertinet ad Dominum Regem & non ad capitalem Dominum nisi cum in propria persona profectus fuerit in seruitio, & nisi cum pro seruitio suo, satisfecerit Domino Regi, &c. ideo forinsecum dici potest, quia sit & capiturforis siue extra seruitium quod sit

(e) Brac. lib. 2. fo. 36. 37. Britton fol. 164. 165. Fleta lib. 3. cap. 14. 19. E. 2. Auowrie 224. 26. Ass. 65. 31. Ass. 30. 30. E. 3. 23. 8. E. 3. 67. 7. H. 4. 19. Perk.

Tenure p homage, Fealtie, & Escuage, est a tener p seruice de chiuler, & trait a luy garde, mariage, & relefe. Car quant tiel tenant mourust, & son heire male est deins lage de 21. ans, le Seignior aura la terre tenus de luy tanque al age del heire de 21. ans, le quel est appel pleine age, pur ceo que tiel home per entendement del ley nest pas able de faire tiel seruice de chiualer, deuant lage de 21. ans: Et auxy si tiel heire ne soit marie al temps de mort de tiel Auncester, donque le seignior auera le garde & le mariage de luy. Mes si tiel Tenant deuie, son heire female estleant dage de 14. ans, ouf de plus donque le Seignior

Tenure by Homage, Fealtie & Escuage, is to hold by Knights Seruice, & it draweth to it Ward, Marriage, and relefe. For when such Tenant dieth, & his heire male bewithin the age of 21. years, the Lord shall haue the land holden of him vntill the age of the heire of 21. yeares the which is called full age, because such heire by intendment of the Law is not able to doe such knights seruice before his age of 21. yeares. And also if such heire bee not married at the time of the death of his Ancestor, then the Lord shall haue the wardship and marriage of him. But if such Tenant dieth, his heire female being of the age of 14. yeares, or more, then the Lord

nauera my le garde del terre ne de corps pur ceo que feme de tiel age poit auer Baron able de faire seruice de Chiualer. Mes si tiel heire female soit deins lage de 14. ans, & nient marie al temps de la mort son Auncestor, donque le Seignior auera le garde de la terre tenus de luy, tanque al age de tiel heire female de 16. ans, pur ceo q̃ il est done per le Statute de westm. 1. cap. 22. Que per 2. ans prochein ensuant les dits 14. ans, le Seignior poit tender conuenable mariage sãs disparagement a tiel heire female. Et si le Seignior deins les dits 2. ans ne luy tend̃ tiel mariage, &c. donque el al fine des dits 2. ans, poit enter & ouste son Seignior. Mes si tiel hr̃e female soy marie deins lage de 14. ans en la vie son ancestor, & son auncestor deuy el esteant deins lage de 14. ans, le Seignior nauera forsq̃ la garde de la terre, iesques a fine de 14. ans, dage de tiel heire female, & donq̃

shall not haue the wardship of the land, nor of the body, because that a woman of such age may haue a husband able to doe Knights Seruice, but if such heire female bee within the age of 14. yeares, and vnmarried at the time of the death of her ancestors, the Lord shal haue the wardship of the land holden of him vntill the age of such heire female of 16. yeares. For it is giuen by the Statute of W. 1. cap. 22. that by the space of two yeares next ensuing the said 14. yeares, the Lord may tẽder conuenable mariage without dispatagement to such heir female. And if the Lord within the said two yeares do not tender such marriage, &c. then shee at the end of the said 2. yeares may enter, and put out her Lord; but if such heire female bee married within the age of 14. yeares in the life of her Ancestor, & her Ancestor dieth, she being within the age of 14. yeares, the Lord shall haue onely the Wardship of the land vntill the end of the 14. yeares of age of such

Domino capitali. And it is called Scutagium, as it appeareth (f) by Littleton & many authorities before recited. Sometime droit de espee. Also it is called (g) Regale seruitium, quia specialiter pertinet ad Dominum Regem. Vt si dicatur in Carta, faciendo inde fornisecum seruitium, vel Regale seruitium, vel seruitiũ Domini Regis quod idem est, &c. And another saith: Et sunt quædam seruitia fornisecа quæ dici poterunt Regalia quæ ad scutum præstantur, & inde habemus Scutagium, & ratione scuti pro feodo militari reputatur, &c. So as in respect of him that doth it, it is called seruitium militis, but in respect of him for and to whom it is done, viz. to the King, and for the Realme, it is called Seruitium Regale, or Seruitium Domini Regis, &c. (h) In ancient time they which held by Knights seruice were called Milites, qui per loricas, &c. defendunt, & deseruiunt, &c. and sometime this seruice is called Seruitiũ hauberticum. And in ancient time such as held by Knights Seruice for the defence of the Realme had many priuileges granted to them by Law: as for example they might haue a Writ De essend' quiet' de tallagio, the effect whereof was (i) Si Th. filius Ranulphi terram suã teneat per seruitiũ militare, sicut Domino Regi monstrauit, tunc nullã ab eodem Th. capiant tallagiũ nec pro eo dando ipsum distringant, vel homines suos qui per consimile seruitium teneant. And this agreeth with the ancient charter of King Henry the 1. before mentioned, which he made on the day of his Coronation for the restitution of the ancient Lawes. (k) Militibus qui p̃ loricas terras suas defendunt & deseruiunt terras Dominicarum carucar' suarum quietas ab omnibus gildis, & omni opere &c. concedo: and the reason thereof is there yeelded, Sicut cum magno grauamine alleuati

(f) Bracton vbi supra. Fleta lib. 3. cap. 14.

(g) Britton fol 187. Bracton vbi supra.

(h) Carta Hen. prim. Mat. Paris. Mirror, cap. 2. sect. 17.

(i) Rot. claus. 19. H. 3. m. 12.

(k) Carta H. 1. in libro Rub. fol. 41. in sacrario.

sint, ita equis & armis se bene instruant vt apti & parati sint ad seruitium meum, & defensionem Regni mei. But these Primesleges and Quitrances are discontinued, and the charge remaineth.

(l) Glanuil lib. 7. ca. 9. 10. Fleta lib. 1. ca. 8. & 9. & lib. 3. cap. 16, 17, &c. Bracton lib. 2. cap. 16. Mirror cap. 5. sect. 2. Britton 162.

It is called commonly in (l) our Books, Seruitium militare, &c. or Seruitium militis. And this seruice was created and prouided for the defence of the Realme, to performe which seruice the heires are not accounted in Law able till the age of one & twentie yeares. Therefore during their minoritie, the Lord shall haue the custody of them, not for benefit onely, but that the Lord might see, that they be in their young yeares taught the deeds of Chiualrie, and other vertuous and worthy Sciences.

(m) Fortescue cap. 44.

(m) Si hæreditas teneatur p seruitium militare, tunc per leges infans ipse, & hæreditas eius, &c. per Dominum feodi illius custodientur, &c. quis, putas, infantem talem in artibus bellicis quos facere, ratione tenuræ suæ, ipse astringitur Domino feodi sui, melius instruere poterit, aut velit, quam Dominus ille, cui ab eo seruitium tale debetur, & qui maioris potentiæ & honoris æstimatur, quam sunt alii amici propinqui tenentis sui? Ipse namque vt sibi ab eodem tenente melius seruiatur diligentem Curam adhibebit, & melius in hiis eum erudire expertus esse censetur quam reliqui amici iuuenis, &c. & reuera non minimum erit Regno accommodum, vt incolæ eius in armis sint experti, nam audacter quilibet facit, quod se scire ipse non diffidit.

(n) Lamb. fol. 135. a.

(n) Amongst the Lawes of Saint Edward the Confessor, it is thus prouided. Debent enim vniuersi liberi homines, &c. secundum feodum suum, & secundum tenementa sua arma habere, & illa semper prompta conseruare ad tuitionem Regni, & seruitium Dominorum suorum juxta preceptum Domini Regis explendum & peragendum. And William the Conqueror confirmed that Law in these words: Statuimus & firmiter præcipimus vt omnes Comites, & Barones, & Milites, & Seruientes, & vniuersi liberi homines totius Regni

ſon baron & luy poient enter en la terre & ouſte le ſeignior, car ceo eſt hors de cas de le dit eſtatute, entant que le Seignior ne poit tender mariage a luy que eſt marie, &c. Car deuant le dit eſtatute Weſtm. 1. tiel iſſue female que fuit deins age de 14. ans, al tẽps de mort ſon auncester, & puis que el auoit accomplish lage de 14. ans, ſans aſcun tender de mariage per le Seignior a luy, tiel heire female donque puiſſoit enter en le terre, & ouſte le ſeignior ſicome appiert per le reherſall & parolx de le dit ſtatute, iſſint que le dit Statute fuit fait en tiel cas, tout pur laduantage de Seigniors come il ſemble. Mes vncore ẽ touts foits eſt entendue per les parolx de m̃ le Statute que le Seignior nauera les deux ans apres les 14. ans, come eſt auantdit, mes lou tiel heire female ſoit deins lage de 14. ans, nient marie al temps de mort d ancestor.

heire female, and then her husband and shee may enter into the land, & ouſt the Lord: For this is out of the case of the said statute, insomuch as the Lord cannot tender mariage to her which is maried &c. For before the said statute of W. 1. such issue female which was within the age of 14. yeares at the time of the death of her ancestor, & after she had accomplished the age of 14. yeares, without any tender of mariage by the Lord vnto her, such Heire Female might haue entred into the land, and ousted the Lord as appeareth by the rehearsall and words of the said statute, so as the said statute was made (as it seemeth) in such case altogether for the aduantage of Lords. But yet this is alwayes intended by the words of the same Statute, that the Lord shall not haue these two yeares after the 14. yeares as is aforesaid, but where such heire female is within the age of 14. yeares, and vnmarried at the time of the death of her Ancestor.

regni noſtri prædicti habeant & teneant ſe ſemper in armis & in equis vt decet, & oportet, & quod ſint ſemper prompti & parati ad ſeruitium ſuum integrum nobis explendum & peragendum cum ſemper opus adfuerit, ſecundſi quod nobis debent de feodis & tenementis ſuis de jure facere, &c. Out of theſe two Lawes the ſtudious and learned reader will gather diuers notable things. And therefore if after the Lord hath the wardſhip of the body and the land, the Lord doth releaſe to the infant his right in the Seignorie, or the Seignorie deſcendeth to the infant, he ſhall be out of ward both for the body and the land, for he was in ward in reſpect he was not able to doe thoſe ſeruices which he ought to doe to his Lord, which now are extinct, and Ceſſante cauſa, ceſſat cauſatum. And our Author ſaith, that the Tenure by Knights Seruice draweth vnto it Ward, Marriage, &c. ſoas there muſt be a Tenure continuing. As if the Conuſor in a Statute Merchant be in execution, and his land alſo, and the Conuſee releaſe to him all debts, this ſhall diſcharge the execution, for the debt was the cauſe of the execution, and of the continuance of it till the debt be ſatisfied, therefore the diſcharge of the debt which is the cauſe, diſchargeth the execution which is the effect.

See W. 1. cap. 48. The ſecond part of the Inſtitutes.

¶ *Et trait a luy gard, marriage, & reliefe.* So as regularly there be ſix incidents to Knights Seruice, (viz.) two of honour and ſubmiſſion, as Homage and Fealtie. And foure of profit, viz. Eſcuage, whereof he hath treated before, Ward, (i. Wardſhip of the land) Marriage, and Reliefe; of all which our Author hath ſpoken. But there be other incidents to Knights Seruice beſides theſe, (a) as Aide pur faire fits chiualier, & aide pur file marier, &c. Which at the Common Law were vncertaine, and were called rationabilia auxilia, becauſe if they were exceſſiue and vnreaſonable in the iudgement of the Court where they were queſtioned, they ought not to be paid: But now as well in the Kings caſe, as in the caſe of the ſubiect, they are by Acts of Parliament reduced to certaintie, which are worthy your reading.

20. Aſſ. p. 7.

mſs: v: 99: a. 4 *

(a) Grand. Cuſt. de Norm. ca. 35. Regiſt orig. fo. 87. Glanuil. lib. 9. ca. 8. 35. Fleta lib. 2. cap. 40 & lib. 3. ca. 14 Mirror ca. 1. ſect. 3. Britton fo. 55. & 70. F. N. B. 82. b. W. 1 ca. 36. 25. E. 3. ca. 11. 11. H. 4. 34. 5. E. 3. 11. Vid. ſect. 110.

¶ *Gard*, or Ward in Latine Cuſtodia, and hereof the Lord is called Gardian, Cuſtos; and the minor is called a Ward or one in ward. (b) Andalbeit (as our Author ſaith) Knight ſeruice draweth with it Ward, &c. yet by cuſtome the heire of him that holdeth in Socage may be in ward.

(b) 8. H. 3. Preſcript. 38. Paſch. 21 E. 1. Coram rege Rot. 43. Nota pro Hibernia Prior del St. Trinitie de Dublins caſe.

¶ *Marriage.* Maritagium betokeneth not only the copulation of man and wife in marriage, but alſo (as in this place here) the intereſt of the Gardian in beſtowing of a Ward in marriage, which the Law gaue to the Lord not for his benefit onely, but that hee ſhould match him vertuouſly and in a good family without diſparagement, as ſhall bee ſaid hereafter, which is the principall foundation of his eſtate.

¶ (c) *Reliefe.* Releuium, is deriued from the Latine word Releuare; for ſo (d) ancient Authors ſay, and giue this reaſon, Quia hæreditas quæ jacens fuit per anteceſſoris deceſſum, releuatur in manus hæredum, & propter factam releuationem facienda erit ab hærede quædam præſtatio quæ dicitur releuium. And in Domeſday it is called Releuamentum and Releuatio.

(c) Vid. ſect. 112.
(d) Bracton lib. 2. ca. 36. fo. 84. Fleta lib. 1. ca. 10. & lib. 3. ca. 16. 17. Britt. ca. 69. 70. Glanuil lib 9. ca. 4. & lib. 7. ca. 9. Ockam de differentiis releuiorum.

ſect. 112

The reliefe of a whole Knights fee is fiue pound, and ſo according to that rate. And this reliefe was as ſome hold certaine by the Common Law, * but the reliefe of Earles and Barons were intertaine, and therefore were called Releuia rationabilia but the Statute of Magna Carta, cap. 2. limits them in certaine, and mentioneth alſo a Knights fee. But I read in the Booke of Domeſday, Quod Tainus vel miles regis dominicus moriens pro releuamento dimittebat regi omnia arma ſua & equum vnum cum ſella & alium ſine ſella, quod ſi eſſent ei canes vel accipitres præſtabantur regi, vt ſi veller, acciperet. *vid Spelm. tenure of Knights 31. 32.*

(*) Ockam vbi ſupra. Bracton lib. 2. fo. 85.

Since Littleton wrote (e) there is a good Law made againſt fraudulent Feoffments, Gifts, Grants, &c. contriued of fraud to hinder or defraud Lords, &c. of their Reliefes and Heriots amongſt other things, for the expoſition of which Statute read the authorities quoted in the margene. And it is to be obſerued that the words of the ſaid Act of 13. Eliz. are, (bee it therefore declared, ordained, and enacted) and therefore like caſes, and inſemblable miſchiefe ſhall be taken within the remedy of this Act by reaſon of this word (declared) whereby it appeareth what the Law was before the making of this Statute.

(e) 13. Eliz. ca. 5. 17. E. 3. Reliefe 3. 7. E. 3. ib. 11. lib. 3. fo. 80. &c. Twines caſe. Lib. 5. fo. 60. Gooches caſe. Lib. 6. fo. 18. Pakemans caſe. Lib. 10 fo. 56. b. See alſo the ſtatutes of 3. H. 7. c. 4. & 50. E. 3. ca. 6. Vid. Mich. 12. & 13 Eliz. Dyer 295.

¶ *Son heire male.* (f) For regularly by the Common Law the heire ſhall not be in ward vnleſſe he claime as heire by deſcent, The Statute of Merton, De his qui primogenitos feoffare ſolent; (g) did helpe Feoffments by collusion in certaine caſes. And Britton ſaith that Robert de Walrand a Sage of the Law did aduiſe the great Lords of the Realme to make the ſaid Statute, which when it was paſt, the ſame Act tooke his firſt effect in the heire of Walrands owne heire, whereof Britton maketh a ſpeciall remembrance. But now (h) by the Statutes of 32. & 34. H. 8. of Wills, he which holdeth lands by Knights Seruice may by Act executed in his life time, or by his laſt will in writing diſpoſe two parts as by the ſaid Acts appeareth. If hee diſpoſe all by Act executed, then it ſhall ſtand good againſt the heire ſo

(f) Britton 168.
Fleta lib. 1. ca. 9.
(g) Merton ca. 6. Bract. fo. 85. Brit. fol. 69. 9. H. 4. 6. 4. H 7. ca. 17. 27 H. 8. 7. 89. Partridges ca. Pl. Com. 82.
(h) 32. H. 8 ca. 1. 34. H. 8. ca. 5.

so as nothing shall descend vnto the heire. But in case of a deuise by his last will, a third part shall descend to the heire, though all be deuised away: and if the Tenant leaue a third part to descend, then the deuise is good for the residue. (i) But these things require so many diuersities grounded vpon euident reasons, and are so plainely expressed in my Commentaries, as they (being very long) shall not need to be repeated here. (k) And that the tenure by Knights seruice draweth to it Ward, Marriage, and Reliefe, is of great antiquity, for so it was in the time of King Alfred.

(i) Li. 3 fo. 25. 26. in Butlers case. Li. 6. fo. 75 in Sir George Cursons case. Li. 8. fo. 163. Wights case. Eod. lib fo. 171. in Vigil Parkers case.
(k) Mir. ca. 1. sect. 3.

¶ *Quant tiel tenant mort.* Here Littleton speaketh not of a dying seised by the Tenant, for in many cases the heire shall be in Ward, albeit the Tenant died not seised, &c. nor in the homage of the Lord. As if the Tenant maketh a feoffement in fee vpon condition, and the feoffor dieth, after his death the condition is broken, the heire within age entreth for the condition broken, he shall be in Ward, and yet the feoffor had no estate or right in the land at the time of his death, but only a condition and which was broken after his decease. (*) But because the condition restoreth the Tenant to the land in nature of a descent, (for he shall be in by descent) by the same reason shall it restore the Lord to the Wardship, seeing now (as Littleton saith) the heire of his Tenant is within age, and not able to doe him seruice, and no default in the Lord to barre him of his wardship.

(*) 39. E. 3. 36. tit. Gard. 92. 33 E. 3. Gard. 162. 1. H. 7. 12. 19 E 3. 1 Gard. 114. 18. Ass. 18. 40. Ass. 36. 20. E. 362. 4. H. 6. 16. b. F. N. B. 143. 6. H. 4. 4. a.

(l) And so I doe take it, that if the heire within age recouer in a Dum non fuit compos mentis, or Formedon en discender, or remainder as heire, or such like, the heire shall bee in Ward, for these be stronger cases than the former, for here a right doth descend to the Demandant, which right being by course of Law restored to the possession of the heire within age, by consequence the Lord is to haue the Wardship of him, but in the case of the condition, no right at all descended to the heire, as hath beene said.

(l) 7. H. 4. 12. 11. H. 7. 12. 21. E. 4. 7. 6. 40. E. 3. 43. 4. M. 136. 15. E. 4. 10. 11.

And so if Tenant in taile, the remainder in fee, maketh a feoffement in fee, and dieth leauing the issue in taile within age, if the feoffee infeoffe the issue in taile, whereby he is remitted, he shall be in Ward to the Lord: for as he is restored to the title of the land as heire, so is the Lord restored to his title of Wardship as Lord of the Fee. And as to this purpose herein I take no difference betweene a right of action and a right of entry descending, when by action the right of the land is lawfully recouered by the heire within age, to his Tenant, and albeit he dyed not in his homage, yet there was a right of homage, and no default or laches was in the Lord, or act done by him to preiudice himselfe thereof.

33. E. 3. Gard. 162.

But if one leny a fine executory (as Sur grant & render) to a man and his heires, and he to whom the land is granted and rendred, before execution dieth, his heire being within age entreth, he shall not be in ward, for his Ancestor was neuer Tenant to the Lord: and so there is a manifest diuersity betweene this and the other cases. Et sic de cæteris.

11. H. 7. 12.

But if the Tenant maketh a feoffement in fee of lands holden by Knights seruice, to the vse of the feoffee and his heires, vntill the time that the feoffor pay to the feoffee or his heires a hundred pounds, for the which a time and place is limited; the feoffee dieth, his heire within age, the Lord shall haue the Wardship of the body of the heire, and of the lands of the feoffee, conditionally, for he cannot haue a more absolute interest in the Wardship, than the heire hath in the tenancie: therefore if the feoffor pay the money at the day and place, and entreth into the land, in this case both the Wardship of the body and lands is deuested, because the Lord had no absolute interest in neither of them, but doth depend vpon the performance or not performance of the condition.

13 E. Dyer 298. v. 80. 6.

(*) So if the Conusor of a fine executory of lands holden by Knights seruice dieth, his heire within age, the Lord shall haue the Wardship of the body and land: but if the Conusee entreth, the heire is disherited, and the Lord hath lost the whole benefit of his Wardship.

(*) 12. H. 4. 16. per Thirning.

If the Disseisee dieth, his heire being within age, (m) the Lord shall haue the Wardship of the heire of the body of the Disseisee. (n) But put the case that in that case the Disseisor dieth seised, and his heire within age, the Lord may seise the Wardship of his heire also, and of the land also: but the doubt is, whether the heire of the Disseisee shall after the descent to the heire of the Disseisor, continue in ward, for that after the descent the heire of the Disseisor is become his lawfull Tenant, and the heire of the Disseisee is not Tenant vnto him vntill he hath recouered the land.

(m) 41. E. 3. 225.
(n) 15. E. 4. 11.

If Cestiq; que vse before the Statute of 27. H. 8. had dyed, his heire within age, the Lord (o) should haue the Wardship of his heire: and if the feoffee had died, his heire within age, the Lord should haue had the Wardship of his heire also, and so a double Wardship for one and the same land, the one by the Statute of 4. H. 7. the other by the Common law.

(o) 14. H. 8. 5. 4. H. 7. cap. (p) 41. E. 3. 26. tit. Anowrie 264. 20 H. 6. 9. 48. E. 3. 8. b. 10. E. 3. 26. 31. E. 3. tit. Gard. 116. 18. E. 3. 7. 14. H. 4. 38. 1. H. 5. Grant 43. 5. E. 4. 3. 7. E. 4. 27. 15. E. 4. 13. 2. E. 2. Anow. 181.

(p) Tenant by Knights seruice maketh a gift in taile, the remainder in fee, Tenant in taile maketh a feoffement in fee, and dyeth, his heire within age, the Lord shall haue the Wardship of him: and if the Feoffee dieth, his heire within age, the Lord shall haue the Wardship also of his heire, and of the land.

If

If Tenant by Knights Seruice maketh a gift in taile, and the Donée maketh a feoffment in fee, and the Donee dieth his heire within age, the Donor shall haue the wardship of him, because he is his Tenant in right. (q) But if the Feoffee dieth, his heire within age, the Donor shall not haue the wardship of his heire, but the Lord Paramount, because he is Tenant in fait to him, neither shall the Donor auow vpon the Feoffee or his heire, for the services due vnto him, because he must in his auowrie shew the reuersion in fee to be out of him by the feoffment, and consequently the services incident to the reuersion are also out of him, but he shall auow vpon the Donee and his issues: and thus are all the bookes that seeme to be at variance, either answered or reconciled.

(q) So was it holden Tr. 18.El. in Comm. banco per Cur. Which my self heard and noted, in Sir Thomas Wyats case.
(r) So was it resolued in Sir Tho. Wyats case vbi supra.

(a) *La terre tenus de luy, &c.* Littleton here speaketh of lands holden of a subiect: for if a man hold land of the King by Knights Seruice in Capite, and other lands of other Lords, and dieth his heire within age, the King shall haue the wardship of all the lands by his Prerogatiue: and this was due to the King by the Common Law, the fees of certaine excepted, as in the Statute of Prærogatiua Regis, cap. 1. appeareth.

(a) Glanuill lib.7.cap 10. Bract. lib.2 fo.85.86.87. Brit l.3.c.2. Flet l.1.c.10. 9.H.3. Prærog. 15.21.H.3. tit.26. Rot. Finium 6. Iohan. Stat. Prærog Reg.c.1.

But if a man holdeth lands of the King by Knights Seruice, as of an Honor or Manor, &c. (b) in that case the King shall onely haue the lands holden of him, and not of any other. Yet by reason of Tenures of the King by Knights Seruice, of certaine Honours, (while they were in the Kings hands) the King (as some haue said) had (as it were by prescription) his Prerogatiue, viz. Raleigh hagener bonony and Peuerel and so of lands holden by Knights Seruice of the Duchie of Lancaster in the Countie Palatine.

(b) Bract. vbi supra. Mag. Carta ca.31. 1.E.6.ca.4. 5.E.3 5.47.E.3.21.29.H. 8. tit. Liuer. 58. 28.H.8.ibid.55.

(c) When an heire hath been in ward to the King by reason of a tenure in Capite, after his full age he must sue liuerie, which is halfe a yeares profit of his lands holden. But if he be of full age at the time of the death of his Ancestor, then hee shall pay for lands in possession a whole yeares profit for Primer seisin: but if it be of a reuersion expectant vpon an estate for life, as Tenant in Dower, Tenant by the Curtesie, or Tenant for life, then he shall pay but the moitie of one yeares profit.

(c) Lib.8. fol.172. Hales case. 38 H.8. Br. tit. Liuerie 60. Vid. sect. 154.

(d) If the heire be in ward by reason of a tenure of an Honour or Manor (except as before) he shall not sue liuerie, but an Ouster le maine cum exitibus, albeit he neuer made tender. (e) And if he be of full age, the King shall haue no Primer seisin, but relefe. But where the tenure is in Capite, there the King shall haue the meane profits vntill the tender be made, and if the tender be made, and not duly pursued, the King shall also haue all the meane profits.

(d) 1.El.Dier 168.

(e) 32.H.8.tit. Lib.Br.62.

(f) He that holdeth of the King by Socage in chiefe, and dieth, his heire of full age, the King shall haue liuerie and Primer seisin only of the lands so holden, and not of the lands holden of others. (g) But if the heire of such a Tenant in Socage in chiefe, be within the age of fourteene at the death of his Ancestor, he shall neither sue Liuerie, nor pay Primer seisin, either then or any time after: and the reason thereof is, for that the custody of his body and lands in that case, belong to the Prochein amy, as Gardian in Socage. (h) Neither shall the King haue Primer seisin of lands holden in Burgage, (as some haue said) for that it is no Tenure in Capite.

(f) 38.H.8. Liuer Br.60. 45.E.3.11. 35.H.6.52. Stanf.13.b.
(g) 20.El.Dyer 360. F.N.B.259.b.

Note, there is a generall Liuerie, and a speciall Liuerie: A generall Liuerie hath two properties.

First, it is full of charge to the heire, for he must finde an office in euery Countie where he hath land, or else he cannot sue a generall Liuerie, and he must sue out his writ of Ætate probanda, &c.

(h) P.N.B.263.7.E.4.17. Stanf. Prer. 13. Br. tit. Liu.64.

(i) The second propertie is, that it is full of danger: First, It concludeth the heire for euer after to deny any Tenure found in the Office. Secondly, If Liuerie be not sued of all and of euerie parcell which the King ought to haue, whether it be found in the Office or not found (for a generall Liuerie could not be sued by parcels) the Liuerie is void, and the King may reseise the lands, and be answered of the meane profits. So it is if the Office be insufficient, or the Processe whereof the Liuerie was made be insufficient, or the like, the King shall reseise, as is aforesaid. (a) Therefore for the ease of the heire, and for auoiding of such danger, the heire for the most part sueth out a speciall Liuerie, which containeth a beneficiall pardon, and saueth the said charges, and preuenteth the said conclusion, and the other dangers, which being of grace, and not of right, as the generall Liuerie is, the King may well and iustly take more for a speciall Liuerie, than for a generall, for the causes aforesaid, but euer with such moderation as the heire may cheerefully goe thorow therewith.

(i) 46. E.3.33.47. E.3.21. 21. H.6.28. b.33. H.6.50. 29.Ass. 8.Pl. Com. Countee of Leic. case 44. E.3.1. & 25. 12.R.2.Liu 28. 2.H.7.fol.12.

(a) 1.H.4.6.b. 37.H.8. E. Hop.Pr.218.7.E.6.ib.222. Scurfields case. Tr.8. Ja. in cur Ward. 23. El. Dyer 377. 28.H.8.Br.tit. Liuerie 56.

Note that a Liuerie is in nature of a Restitution, which is to be taken fauourably: for if Liuerie be made of a Manor cum pertinentiis, the heire shall thereby haue the Aduowson appendant, otherwise it is in Grants by Letters Patents. vid. Plowd. fo. 399. b

41.E.3.5.5 E.6.27. Ass.48. P. Com. 152.20.El. Dyer 360.

Since the time that Littleton wrote (c) there is a Court of Wards & Liueries erected by authoritie of Parliament concerning the order of the Kings wards, &c. to beholden before the Master of the Wards, and the Councell of that Court appointed by those Acts. This hath

(c) 32.H.8.46. 33.H.8. cap.21.

made

made such a manifold alteration, as were too long here to be inserted, & doth belong to another Treatise mentioned in the Epistle of the iurisdiction of Courts, where it were necessary, that the true iurisdiction of that Court should be set downe, a matter of no great difficulty, seeing it began so late by authority of Parliament. And since Littletons time, (d) there is a right profitable statute made concerning the finding of Offices & other things, not onely concerning the Kings Wards or their rights & possessions, but some other prouisions very beneficiall for the subiect, in all to the number of 12. (e) First, that such persons as hold for tearme of yeares, or by Copie of Court Roll, or haue any rent, common or profit appzender out of any lands found in any office, whereby the King is intituled to the wardship of the lands or tenements, or to the forfeiture of the lands or tenements vpon attainder of treason, felony, præmunire, or any other offence, yet may they haue, hold, enioy, & perceiue their seuerall estates, interests, & profits, although they be not found in the office. And this being a beneficiall Law the estates of tenant by statute staple, Merchant, & Elegit, & Executors that hold lands for paiment of debts are taken to be within the benefit of the clause: (f) and so is a doubt in 14 El. Dier cleered.

(d) 2.E.6.ca.8.

(e) 5.E.4.23. 33.H.8.tit. Entre congeabl. Br. 125.

(f) 14 El. 2. Dier fo. 309.

2. Where it is found, that the heire is of fewer yeares than in truth hee is, hee shall not be concluded hereby, (g) but euerie such heire at his very full age may prosecute a writ of ætate probanda, and sue his Liuerie or ouster le maine, in which case hee had no remedy by the Common Law.

(g) 5. Mar. Dier 136.

(a) 3. Where one person or more be found heire, where another person is heire, the partie grieued had no remedy.

(a) 24.E 3.31.33. 9.H.6 28. 12.E.4.16. 30.Ass.28.lib.4.fo.56 & 60. Sadlers case. Stra. f. prerog.58.b. 42.5.E 4.4. 16.E.4.4. 1.H 7.14. 2 H.7.12. 2.H.7 15. 8.H.7.11. F.N.B. 162. 12 R 2. Liuerie 28. F.N.B. 233. lib.7.fo.44.45. Kens case.

4. Or where one person or more be found heire in one Countie, and another person or persons found heire in another Countie, there could haue beene no interpleading.

5. Or if any person be vntruly found by office lunaticke, or ideot, or dead, the partie grieued may trauerse the said offices, and you may read in Kens case how the office shall be trauersed vpon this Act.

(b) 6. Where it is vntruly found by office that any person attainted of Treason, Felony, or Præmunire, is seised of any lands, &c. the partie grieued hauing tust title of Freehold, shall haue his trauers or Monstrans de droit (without bring driuen by this double matter of Record to his petition of right as he was before this Statute) which is much more speedy than the petition, for vpon the petition there be foure writs of search, and euerie one must haue fortie dayes before the seruing, and now but two Writs of search.

(b) 4.E.4.23. 10.H.6.19. Lib.4.fo.56.&c. Sadlers case. 32.H.8.Entre cong. Br.125. 14.E.3.cap.14.

7. Where an office is found by these words or the like quod de quo vel de quibus tenementa prædicta tenentur, iuratores præd' ignorant, or holden of the King per quæ seruitia iuratores ignorant, it shall not be taken for any immediate Tenure of the King in chiefe, but in such cases a Melius inquirendum to be awarded as hath beene accustomed of old time. This branch hath beene well (d) expounded, for if the first Office finde a tenure of the King per quæ seruitia, &c. yet if vpon the Melius inquirendum the tenure be found of a subiect, the first office hath lost his force per sensum huius Statuti, and need not be trauersed, and the Melius, &c. is in nature of the Dicen clausit extremum or mandamus, &c. and this was but a declaration of the ancient Common Law, as by the words of the Statute (as hath beene accustomed of old) it appeareth; but if vpon the Melius it be found againe as vncertainely as before is said, then it is in iudgement of Law a Tenure in Capite, and so it was before the making of this Act, and so are the bookes that speake hereof to be intended; but if vpon the Melius a Tenure be found of the King Vt de manerio per quæ seruitia, &c. it shall be taken for Knights Seruice.

(d) 12.Eliz. Dier f.292.2. Lib.8.f.168.Paris Stoughters case.

8. Where it is found that lands, &c. are holden of the King immediately, where in truth they are holden of a common person and not of the King immediately, and that the heire is within age, such heire within age shall haue his Trauerse, &c. which he could not haue had by the Common Law.

13.Eliz. Dier 306. 4.H.6.13. 10 H.4.2 b.

9. The meane Lords of whom the lands are holden which the King hath by his prerogatiue during the minoritie of the heire shall receiue & take such Rents as are due vnto them by the hands of such of the Kings Officers as receiue the profits of the same lands, where before that Act, the Lords vsed to spare the rents due, &c. during the King possession, and after Liuerie sued, charged the heire with all the arrerages.

10. There is a prouision for offices found before the Statute or before the 20. day of March next after the Act.

11. A speciall clause is, that a Scire fac' shall be awarded vpon euerie Trauers by force of this Act, and where the partie was put to his petition, there vpon the Trauers there shall be two Writs of search granted.

12. And lastly, if iudgement shall be giuen against the King vpon a Trauerse by vertue of this Act. all former rights appearing of record are saued to the King. But albeit these points are most necessarie to be knowne, yet let vs now returne to Littleton.

15.E.4.12. 46.E.3.12. 21.H.6.11. 3.H.7.5.

Littleton partly and materially (treating of a common person) saith tenus de luy holden of him, for he shall haue nothing in ward but that which is holden of him. But the King by his

prerogatiue

prerogatiue shall not only haue such lands and tenements which (as hath been said) the heire of his Tenant by Knights Seruice in capite holdeth of others, but such inheritances also as are not holden at all of any, as Rent Charges, Rent Secke, Faires, Markets, Warrens, Annuities, and the like; and so is the Law clearely holden at this day, as it hath beene reiolued; and so experience teacheth, that the King by his prerogatiue giuen to him by the ancient Common Law shall haue those inheritances not holden, and so the quære made by (o) Stanford is cleered and made without question.

(o) Stanf.prær.fo.8.b.

The Law is changed since Littleton wrote in many cases both for the marriage of the body, and for the wardship of the lands, and a farre greater benefit giuen to the Lords than the Common Law gaue them, and some aduantage giuen to the heires, which before they had not, which shall be touched briefly.

If the father had made an estate for life or a gift in taile of lands holden by Knights Seruice to his eldest sonne, or other heire apparant within age, the remainder in fee to any other, and dyed, the heire should not haue beene in ward, for this was out of the Statute of Merlebridge: But at this day the heire shall be in that case in ward for his body, and a third part of his land.

Merlebridge, ca.1. Pl.com.82. 27.H.10. 33.H.6.24.

(a) So if the father had infeoffed his eldest son within age and a stranger and the heires of the sonne, and dyed, the sonne should haue beene out of ward, but at this day he shall be in ward for his body, and for a third part of his moitie. (b) So if the father had infeoffed any of his younger sonnes or others for the making of his wife a ioynture, or for the aduancement of his daughters, or for the payment of his debts, and after infeoffe and conuey the land to his heire and died, his heire within age, his heire should not haue beene in ward, because he was bound by the Law of Nature and Nations to prouide for them, but now in all these cases the heire shall be in ward for his body, and a third part of the land, and all this groweth by construction vpon the Statutes of 32. and 34.H.8. (c) But if either the eldest sonne, or any of the younger sons purchase lands of his father which are holden by Knights Seruice, bona fide for the reasonable value, this shall out of those Statutes, and the heire shall neither be in ward, nor pay Primer seison.

(a) 31.E.3. Collusion 29. 33.H.6.14.
(b) 33 H.6.14. 27.H.8.7. 1 ib.6.fo.76.77. Sir George Curtons case. 10.Eliz.260. 3.Eliz.193. 20 Eliz.361. 19.Eliz.376. 5.Mariæ 138.
(c) Lib.8.fo.83, Leonard Loucys case.

And in all the cases aboue said, (for example) if a Feoffment be made to the vse of his wife for life, or to the vse of any of his younger sonnes for life, or to the vse of some persons for life for payment of debts, and vpon all these estates a remainder is limited ouer, if the wife or remaunt for life die in the life of the father, (d) or if it be conueyed to the vse of the wife or younger children in fee, or fee taile, or in fee for payment of debts, & these lands are conueyed away in the life time of the father, after the decease of the father his wardship, &c. accrueth by force of any of the said Statutes, for such estates must continue till the title of wardship doe grow.

(d) Lib.2.fo.92. Bingham's case, lib.6.vbi supra 84. Lib.8.fo.165. Digbyes case.

(e) If the father conuey his lands holden of Knights Seruice either of the King or of any meane Lord to his middle sonne in taile, the remainder to the youngest sonne in fee, and dieth, the eldest being within age, and the King or Lord seiseth the body and two parts of the land, if the middle brother dyes without issue, the King or the Lord shall not haue any benefit of the statute against him in remainder, for the statute was once satisfied, and the statute extendeth not to him in remainder.

(e) 14.Eliz. Dyer 308. 3.Mariæ Dyer 130. Lib.2.fo.93.94. Bingham's case, & Northcots case. Lib.10.fo.80.b. Leonard Loueys case.

(f) If there be a grandfather, father, and diuers sonnes, and the grandfather in the life of the father conuey his lands holden by Knights Seruice to any of the sons, this is out of the statute of 32.H.8. and if the grandfather die, there is neither wardship nor Primer seison due, for the father hath the immediate care of his sons, but if the father be dead, then the care of them belongs to the grandfather, and therefore if the grandfather conuey any of the lands to any of the sonnes, it is within the said Statute: (g) and a conueyance to the vse of any of his collaterall bloud, which is not his heire apparant is out of the said Statute. And so are conueyances either by father or mother to or to the vse of ballard children out of the Statute, for qui ex damnato coitu nascuntur, inter liberos non computantur. And the preamble speaketh of lawfull generations. If a man seised of lands holden in Socage conuey them to the vse of his wife, or of his children, or payment of his debts, and after purchase lands holden by Knights Seruice in capite, and dieth his heire within age, the King shall haue no part of the Socage land. (h) But if in this case he hath by his will in writing deuised his Socage land in fee, and after purchased lands holden in capite, and dieth, the King shall haue so much of that Socage lands as will make a full third part of all. The benefits that grew to the subiect by seuerall Acts of Parliament were, that Tenants in fee simple might deuise their lands by their last wills in writing in such manner and forme, as by the said Acts is prescribed: Also that the father might infeoffe his eldest sonne or other heire tenant or collaterall of the lands holden by Knights Seruice, and the profits of the lands shall be vnto him, &c. In Bingham's case you shall reade excellent matter of estates and vses vpon collateralls, &c. And both the Statutes of 32. and 34.H.8. concerning wills and wardships doe saue wayes preiudiciall to the heires, speaking one example for many. If Tenant by Knights seruice

(f) Lib.6.fo.77. Sir George Cursons case. 2.Eliz. Dyer 183. 8.Eliz. Dyer 248.
(g) Lib.10.fo.83. Leon. Loueys case. 18.Eliz. Dyer 345. 345
(h) Leon. Loueys case vbi supra. Butler & Bakers case, lib.3.fo.25.&c.
* Lib.8.fol.163. Mighes case.

seruice make a feoffment infee to the vse of his wife and her heires, or to the vse of a younger sonne and his heires, or wholly for the payment of his debts. In these cases although no thing at all of the lands so holden descend to the heire, but be wholly diuerted of the same, yet his body shall be in ward: but this for a little taste may suffice, more hereof you may read in my Reports in the seuerall Cases noted in the margent.

Leon. Louyes case vbi supra. 22. Eliz. Dyer 367.

31. E. 3. gard. 61.

2. H. 5. 4.

¶ *Pleine age.* Full age regularly is one and twentie yeares.

¶ *Entendment del Ley.* Entendement, i. intellectus, the vnderstanding or intelligence of the Law. Regularly Iudges ought to adiudge according to the common intendement of Law.

10. H. 6. 8. 21. E. 3. 33. a. 27. H. 8. fo. 10.

By intendment of Law euerie Parson or Rector of a Church is supposed to be resident on his Benefice, vnlesse the contrarie be proued.

Of common intendment one part of a Mannor shall not be of another nature than the rest.

Of common intendment a deed shall not be supposed to be made by collusion. In facto quod se habet ad bonum & malum, magis de bono, quam de malo lex intendit. Lex intendit vicinum vicinifacta scire. Nulla impossibilia aut inhonesta sunt præsumenda, vera autem & honesta & possibilia. Lex semper intendit quod conuenit rationi. As in this case, the Gardian shall haue the custody of the land vntill the heire come to his full age of one and twentie yeares, because by intendment of Law the heire is not able to doe Knights Seruice before that age, which is grounded vpon apparant reason. There note that the full age of a man or woman to alien, demise, let, contract, &c. is one and twentie yeares, the Ciuill Law fiue and twentie yeares, for then the Romanes accounted men to haue plenam maturitatem, and the Lombards at eighteene yeares.

Vide Britton, fol. 169.

¶ *Si le heire ne soit marie al temps del mort de tiel Aunceſter, &c.* Aunceſter is deriued of the Latine word Antecessor, and in Law there is a difference betwixt Antecessor and Prædecessor. For Antecessor is applyed to a naturall person, as I. S. & Antecessores sui, but Prædecessor is applyed to a body Politique or Corporate, as Episcopus London & prædecessores sui. Rector de D. & prædecessores sui, &c.

Glanuill lib. 7. cap. 1. Mirror, cap. 5. sect. 2. Britton fol. 168. b. 39. H. 6. cap. 2.

¶ *Mes si tiel tenant deuie ſon heire female eſteant del age de 14. ans, &c.* And the reason as I finde in Antiquitie, wherefore the Law gaue the marriage of the heire female if she were within the age of fourteene, and that she should not marrie her selfe, was pur ceo que les heires females de nostre terre ne se marieront a nous enemies, & dount il nous conuiendroit lour homage prendre, si eux se puissent marier a lour volunt. This is a speciall age for an heire female to be out of ward if she attaine vnto it in the life time of her Ancestor, for that age she may haue a husband able to doe Knights Seruice. A woman hath seuen ages for seuerall purposes appointed to her by Law: as, seuen yeares for the Lord to haue aid pur file marier: nine yeares to deliuer homage, twelue yeares to consent to marriage, but still fourteene yeares to be in ward, fourteene yeares to be out of ward, if she attained thereunto in the life of her Ancestor, fifteene yeares for to tender her marriage if she were vnder the age of fourteene at the death of her Ancestor, and one and twentie yeares to alienate her lands, goods and chattells.

35. H. 6. 40. Bracton lib. 2. cap. 37.

A man also by the Law for seuerall purposes hath diuers ages assigned vnto him, viz. twelue yeares to take the oath of Allegeance in the Torne or Leet: fourteene yeares to assent to marriage, fourteene yeares for the heire in Socage to chuse his Gardian, and fourteene yeares is also accounted his age of discretion: fifteene yeares for the Lord to haue aid pur faire fitz Chiualer: vnder one and twentie to be in ward to the Lord by Knights Seruice: vnder fourteene to bee out of ward to Gardian in Socage: fourteene to be out of ward to Gardian in Socage, and one and twentie to be out of ward of Gardian in Chiualrie, and to alien his lands, goods and chattels.

34. E. 2. stat. 3. Glanuill lib. 7. cap. 9. Dyer 5. Marie 162. Bracton lib. 2. cap. 37. F. N. B. 202.

¶ *Mes si tiel heire female soit deins age de 14. ans & nient marie, &c. Le Seignior auera la garde del terre.* Thus you see that the Lord cannot haue the Wardship of the land, as if the Lord before the age of fourteene yeares enioy the Wardship of the body, in this case sir Guyan of the body cannot enioy the benefit of the two yeares, because by cannon hold ouer the land, and so the Lord which hath the Wardship of the land only should lose the benefit of the two yeares, because by Statute (order, rule and consideration) any more things, therefore in this case the heire female shall ouer-liue her land at her age of 14. yeares.

35. H. 6. 52. tit gard. 71. Stanford. 3. b. F. N. B. 256. 259. 35. H. 6. 40.

The statement both of the Lord in possession, and of an other by purchase is such, that if the heire female liue within the age of 14. yeares, the Lord by a fiction (as the Law calleth it) shall haue the lands but vntill her age of 14. yeares, because the marriage is lost and gone from him. But if the Lord haue the bodie female of the heire within the age of fourteene yeares, but before the shall personally enter into the land: For Dicimus quod, cum aliquis in ecclesia maioris legis, reddit beneficium legis

Britton fol. 169. 35. H. 6. 52.

If the Lord tender a conuenable marriage to the heire within the two yeeres, and she marry elsewhere within those two yeeres, the Lord shall not haue the forfeiture of the marriage, for the Statute giueth the two yeeres only to make a tender. 35.H.6.52. 35.H.6.tit. gard.71. Lib.6. fol.71. the Lord Darcies case.

¶ *Et si le seignior deins les dits 2. ans ne luy tender tiel mariage, &c. donque el al' fine del dits 2. ans poet entrer, & ouste le seignior.* This is so euident, as it needeth no explication.

¶ *Mes si tiel heire female soit marie deins lage de 14. ans en la vie son ancestor, & son ancestor deuie il esteant deins age de 14. ans, le seignior nauera la gard forsque de la terre iesque al age de 14. ans, &c.* Note, albeit the heire female be married at the age of twelue yeeres in the life of her ancestor, (at which age shee may consent to Matrimony) to a man of full age, that is able to doe Knights seruice, yet if the ancestor die before her age of fourteene, the Gardian shall haue the land vntill her age of fourteene, because (as hath beene said) that is the time appointed by the Common law. And so if the heire male be married in the life of the ancestor at his age of fourteene yeeres, and the ancestor dieth, the Lord shall haue the land vntil the Ward commeth to the age of one & twenty. F.N.B.143.

¶ *Car ceo est hors del case del dit statute, in tant que le seignior ne poet tender mariage a luy que est marie.*

Natura non facit vacuum, nec lex superuacuum. The Law doth neuer enforce a man to doe a vaine thing.

And where the said statute of W. 1. giueth vnto the Lord the said two yeeres, thereby is implyed, that if he dieth within the two yeeres, his Executors or Administrators shall haue the same. For when the statute vesteth an interest in the Lord, the Law giueth the same to his Executors or Administrators. Then put case, That a Lord hath the Wardship of the body and land of an heire female, and maketh his Executor, and dieth before her age of foureteene yeeres, whether the Executor shall haue the two yeeres, because the Executor is not Lord. But I take it, the Executor hauing the Wardship of the body and land, shall in that case haue the two yeeres, for that they were vested in the Lord. 27.H.6.3. 11.E.3.Execs. 77.4.E.3.55. 28.Ass.p.7.

It is further prouided by the said Statute, that if the Lord tender a conuenable marriage to the heire female, within the said two yeeres, and the heire female refuseth, then the Lord shall hold the land vntill her age of one and twenty yeeres, and further vntill he hath leuied the value of her marriage. But if the Lord doth not tender a marriage within the two yeeres, he shall lose the value of the marriage, and content himselfe with the two yeeres paine. 31.Ass.p.26. Lib.6.fol.71.L.Darcies Case. 35.H.6.52. gard.71.

¶ *Car deuant le dit statute, &c. si come appiert per le rehearsall & parols dele dit statute.* Note, The rehearsall or preamble of the Statute is a good meane to finde out the meaning of the Statute, and as it were a key to open the vnderstanding thereof. The tender of a marriage to an heire female before the age of fourteene is void, which must be vnderstood where the Lord may hold the land for the said two yeeres, for then the Statute appointeth the time of the tender, but where the Lord cannot haue the two yeeres, he may tender a marriage to the heire female at any time after the age of twelue and before fourteene, for so he might haue done at the Common law. 35.H.6.52. gard.71. Lib.6.fo.71.Lord Darcies case. Britton 169.

Sect. 104.

¶ NOta, que le pleine age de male & female solonque le common parlance, est dit lage de 21. ans. Et lage de discretion est dit lage de 14. ans, car a tiel age le enf. que est marie deins tiel age a un feme, puit agreer

NOte that the full age of male and female according to common speech is said the age of 21. yeeres. And the age of discretion is called the age of 14. yeeres. For at this age, the infant which is maried within such age to a wo-

¶ Of full age, which is the age of one & twenty, and of the age of discretion, which is the age of 14. somewhat hath beene spoken before. But now to the point of agreement or disagreement in this case. The time of agreement, or disagreement, when they marry infra annos nubiles, is for the woman at 12. or after, and for the man, at fourteene or after, and there need no new marriage, if they do agree, but disagree they may 5.Mar.gard.Br.pl.Litim. 35.H.3.32. 33.prer.reg. cap.6. Tr.24.Eliz.Rot. 841. in bank le roy Bathsters case.

not before the said ages, and then they may disagree and marrie againe to others without any diuorce: and if they once after giue consent, they can neuer disagree after. If a man of the age of fourteene marry a woman of the age of ten, at her age of twelue he may as well disagree, as she may, though he were of the age of consent, because in contracts of Matrimony either both must be bound, or equall election of disagreement giuen to both, and so è conuerso, if the woman be of the age of consent, and the man vnder.

a tiel mariage, ou disagreer.

man, may agree or disagree to such mariage.

Sect. 105.

Max. It is a maxime in law, Quod Dominus non maritabit minorem in custodia sua nisi semel. And another saith, Si semel legitimè nupt' fuer', &c. postmodum non tenebuntur sub custodia dominorum esse. Albeit this marriage is de facto, and not de iure, and though the disagreement dissolueth it ab initio, yet the Lord shall neuer haue the marriage of him.

13.E 1.gard. 137. Britton.fol.169.acc.

Glanuil. lib.7.cap.12.

27.H.6.gard.118.

And so if the Gardian marrieth his Ward to a woman, and after the marriage is dissolued by reason of a precontract, yet the Gardian shall neuer haue the marriage of the Ward againe.

27.H.6.gard. 118.

But if one rauisheth a Ward from the Lord and marrieth him within the age of consent, in that case if the Lord taketh againe his Ward, and he at the age of consent disagreeth to the marriage, the Lord shall haue the marriage of him, for he neuer had it before.

27.H.6.gard. 118.

So likewise, if the Ancestor marrieth his heire apparant infra annos nubiles, and dieth his heire within age, the Ward disagreeth, the gardian shall haue the wardship of him. The same Law it is in the same case, if the wife dieth before the age of consent, the Lord shall haue the marriage of the heire.

F.N.B. 143.

Ambrosia Gorges Case Rep. 6. fol. 22.

7.H. 6.11.

CEt si la Gardein en chiualrie marie vn foits le garde deins lage de 14. ans, a vn feme, & puis sil al age de 14. ans disagree a le mariage, il est dit per ascuns, que lenfant nest pas tenuz per le ley deslre, auterfoits marie per son gardeine, pur ceo que le gardeine auoit vn foits le mariage de luy, & pur ceo il fuit hors de son garde, quant al garde d son corps. Et quant il auoit vn foits le mariage de luy & vn foits fuit hors de son garde, il nauera plus auant le mariage de luy.

AND if the gardian in Chiualrie doth once marry the Ward within his age of 14. yeeres to a woman, and if afterward at his age of 14. yeeres he disagree to the marriage, it is said by some, that the Infant is not tied by the Law, to be againe married by his Gardian, for that the Gardian had once the marriage of him, and because he was once out of his ward, as to the ward of his body. And when he had once the marriage of him, and he was once out of his Wardship, hee shall no more haue the marriage of him.

(a) 30.E.1.gard.156. 12.E.1.gard. 138. 21.E.3.19.20.H.3. gard.41. Temps E.1. Broom 138. 35.H. 6.45. 7.H.6.11. Vide Prer. Reg. cap. 6. 13.H.3.gard. 147. Stam. prer. 36.a.

(b) 27.H.6.gard.118. F.N.B. 143.m. 19.E.3. Iudgement 133, 85.E.3. 16.

(c) 47.E.3.tit. action sur le statute. 38. and the Bookes aboue said.

And so note a diuersity when the Ward is married by the Ancestor or by a Rauisher, and when by the Gardian himselfe, (a) For if the Ancestor marry his heire apparant infra annos nubiles and dieth: In this case if the marriage be dissolued by disagreement, either of the male or of his wife, the Gardian shall haue the marriage of him. (b) And so it is if a Rauisher marry a Ward infra annos nubiles, and the marriage is dissolued, vt supra, the Gardian shall haue the marriage. If the heire male in Ward of the age of ten yeeres be married without the consent of the Lord, he may tender vnto the heire infra annos nubiles, a marriage, albeit he be so married, and if he refuse, and agree to the former marriage, the Lord shall haue the forfeiture of his marriage, as it hath beene holden. But otherwise it is (c) (saith Littleton) where the Gardian himselfe marrieth the Ward, vt supra. And the reason of the diuersity is, because in this case the Gardian had once the marriage of him, but so had not he in either of the other cases, and it is a Maxime in Law, Quod Dominus non maritabit pupillum nisi semel.

It appeareth vpon consideration of all the bookes aforesaid, that where the Ancestor marrieth his heire apparant within the age of consent, and dieth, the infant still being within the age of Consent, the Lord may take the infant (if he will) into his possession, in respect the infant may disagree to the marriage, and if the infant be detained from him, he shall recouer him in a writ of Rauishment of Ward, and thereupon haue the infant deliuered to him. (d) But if the Ancestor marrieth his heire apparant infra annos nubiles, and dieth his heire being infra annos nubiles, and after age of Consent the heire agreeth to the marriage, neither the King nor the Lord shall haue the marriage, for now it is a marriage ab initio, and there need no other marriage.

(d) 7. H. 6. 11. adiudged in the booke at large. v. 79. b3.

Section 106.

¶ EN meisme le manner est, si le gardein luy marie, & la feme deuei esteant lenfant deins lage de xiiii. ans, ou xxi.

IN the same manner it is if the Gardian marry him & the wife dye the infant being within the age of 14. yeeres or 21.

¶ This Littleton addeth because hee spake in the case next before of a disagreement by the infant, here hee saith, that if the wife dye, the infant being within the age of Consent.

Sect. 107.

¶ ET que tiel enfant poit disagréer a tiel marriage, quant il vient al age de xiiii. ans, il est proue per les parolx del statute de Merton Cap. 6. que issint dit.

AND that such infant may disagree to such marriage, when he comes to the age of 14. yeeres, it is proued by the words of the statute of Merton cap. 6. which saith thus:

De dominis qui maritauerint illos quos habent in custodia sua, villanis, vel aliis, sicut burgensibus vbi disparagentur, si talis hæres fuerit infra 14. *annos, & talis ætatis quod matrimonio consentire non possit, tunc si parentes illi conquerantur, dominus amittat custodiam illam vsque ad ætatem hæredis, & omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis infra ætatem existentis, secundum dispositionem parentum propter dedecus ei impositum. Si autem fuerit* 14. ans & vltra, *quod consentire possit, & tali matrimonio consenserit, nulla sequatur pœna.*

¶ *Estatut de Merton.* So called because the Parliament was holden at Merton. 20. H3.

¶ *Et que tiel enfant poit disagreer, &c. il est proue, &c.* Note the time of disagreement is set downe by act of Parliament, and so obserued by Littleton, who seekes no other proofe therein than by the Law of England.

Merton ca. 6.

¶ Et issint est proue per mesme le estatute, que nul disparagement est mes lou celuy que est en garde est marie deins lage de xiiii. ans.

And so it is proued by the same statute, that there is no disparagement but where hee which is in Ward is married within the age of 14. yeeres.

¶ *Vbi disparagentur.* Disparagement, disparagatio commeth of the Verbe disparago, and that of dispar, and ago.

Now it is necessarie to bee vnderstood what disparagements there be for the which the heire may refuse.

And of such disparagements there be foure kindes. The first propter vitium animi, as an Ideot, non compos mentis, a Lunatique, &c. The second propter vitium sanguinis, as first a Villein. 2. Burgensis. 3. The sonne or daughter of a person attainted of treason or felony, albeit pardoned, for the blood is corrupted. 4. A Bastard. 5. An Alien or the childe of an Alien, Burgensis or a man of trade, as an Haberdasher, a Draper

Bracton lib. 2. fol. 91. Britton fol. 169. Fleta l. 1. cap. 18. Mirror ca. 2. Sect. 17. Rot. Parl. 18. E. 1. fo. 9. The daughter of Neuil married to the sonne of Tho. of Weyland after his attainder.

Diaper or the like, (and this agreeth with the Ciuill law, Patricii cum plebeijs matrimonia ne contrahant.) whereof Glanuil speaketh thus, Si verò fuerit filius burgensis ætatem habere tunc intelligitur, quando discrete sciuerit denarios numerare, & pannos vlnare & alia paterna negotia similiter exercere.

The third, propter vitium corporis, as first de membris, hauing but one hand, one foot, one eye, &c. Secondly, deformity, as to loke a squint, a creeple, halt, lame, decrepit crooked, &c. Thirdly, Priuation, as blind, deafe, dumbe, &c. Fourthly, Disease horrible, as leprosie, palsie, dropsie, or such like diseases. Fiftly, great and continuall infirmity, as a consumption and such like. Sixtly, Impotencie to haue children in respect either of age past children, or so tender yeeres as there is too great disparity, or for naturall disabilitie or impediment or such like. Seuenthly, Defloured of her virginity.

The fourth kinde of disparagement was propter iacturam priuilegij, &c. as to marry the heire to a widow whereby hee should by reason of the Bigamie haue lost the benefit of his clergy, whereby he might saue his life, but now the exception of Bigamie in that case is ouerted by the (d) Statute. And Littleton saith, that there be many other disparagements which are not specified in the said Statute, for those two mentioned are put but for examples. In a word, it must be competens maritagium absque disparagatione.

1.E.6.cap. 12.

(d) Vide Sect. 109. F.N.B. 149.

¶ *Si talis heres fuerit infra 14. annos, & talis ætatis quod matrimonio consentire non possit, &c.* Note albeit the Ward where he is disparaged may disagree at his age of fourteene yeeres, yet the Law doth so abhorre the odious dealing of the Gardian, to whom the custody of the heire is committed, and his horrible profanation of honourable marriage, the only ligament of mens Inheritances, as it inflicteth a great punishment vpon the Lord in this case, albeit the marriage be not perfect, but auoidable by disagreement.

¶ *Tunc si parentes illi conquerantur.* Littleton in the next Section expounds these words in this manner, viz. Si parentes conquerantur, i. Si parentes inter eos lamententur, quæ est tant a dire, quæ si les Cosens de tiel infant ont cause de faire lamentation ou complaint pur le hont fait lour Cosen issint disparage, quel est in manner va hont a eux. Parens est nomen generale ad omne genus cognationis. See more of this in the next Section.

¶ *Dominus amittat custodiam illam vsque ad ætatem hæredis & omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis, &c.* Here followeth the penalty.

First, amittat custodiam, that is, the whole benefit of the Wardship. But in this case if the Gardian hath granted the Wardship of the Land to another bona fide, and after, the heire is disparaged, the Grantee shall not forfeit his interest, for the Statute is (Dominus amittat custodiam.)

Secondly, Et omne commodum quod inde receptum fuerit conuertatur ad commodum hæredis secundum dispositionem parentum. These words are expounded by Littleton which needeth no further explanation: Now where readers vpon this Statute haue put a case, that if the Tenant hath issue a daughter, his wife enseint with a sonne and dieth, the Lord doth disparage the daughter before the age of twelue yeeres, the son is borne, the daughter disagrees, the sonne dieth, the daughter within the age of fourteene, she shall be in ward againe. This case is not warranted by this Statute, for this Statute extends not to the heires female.

Vide the second part of the Institutes. Merton cap. 3. 6. 35. H. 6, 53. v: 76: 6.

If the Tenant make a Lease to A. for life, the remainder to B. in fee, the Tenant for life surrenders vpon condition, B. dieth his heire within age, the Lord disparages the heire, Tenant for life entreth for the condition broken and dieth, the heire shall be out of Ward, for that he claimeth as heire to one man. But if after the disparagement, lands descend from another ancestor to the Ward so disparaged, he shall be in Ward for those Lands.

If two Joyntenants be of a ward, and the one disparageth the heire, both shall lose the Wardship, for the words be & omne commodum, &c.

¶ *Si autem fuerit 14. annorum & vltra, &c. nulla sequatur pœna.* By which it appeareth (as Littleton obserueth) that there is no disparagement but when the Ward is married within the age of fourteene.

Britton. fol. 169. acc.

Sect. 108.

¶ *Estatute de magna Charta.*

Thought be in forme of a

¶ Note que il soloit estre question, coment ceux

Note, it hath been a question, how these words shall bee

pu

parolr ſerront entendes, Si parentes conquerantur, &c. *Et il ſemble a aſcũs q̃ conſideront leſtatute de Magna charta que voit, Quod hæred' maritentur abſq; diſparagatione, &c. Sur quel cel Statute de Merton ſur tiel point eſt foundue, Que nul action poit eſtre pris ſur cel Statute, entant que il ne fuit vnques view ne oye, q̃ aſcun actiõ fuit port ſur cel Statute de Merton p cel diſparagement enuers le gardeine pur ceſt matter auandit, &c. Et ſi aſcun action, puiſſoit eſtre priſe ſur tiel matter, il ſerra entendue aſcun foits eſtre miſe en vze. *Et nota que ceux parolr, ſerront entendes, Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur, que eſt taunt adire, que ſi les couſins de tiel enfant ont cauſe de faire lamentation ou complaint enter eux pur le vont fait a lour Couſin iſſint diſparage, quel eſt en maner vn vont a eux, donques puit le prochein couſine a que vnderſtood. (*Si parentes conquerantur.*) *And it ſeemeth to ſome who conſidering the ſtatute of *Magna charta*, which willeth, *Quod hæredes maritentur abſq; diſparagatione, &c.* Vpon which, this ſtatute of *Merton* vpõ this point is founded, that no action can be brought vpon this ſtatute, inſomuch as it was neuer ſeene or heard, that any action was brought vpon the Statute of *Merton* for this diſparagement againſt the gardian for the matter aforeſaid, &c. And if any action might haue beene brought for this matter, it ſhall bee intended that at ſome time it would haue beene put in vre. *And note that theſe words ſhall bee vnderſtood thus, *Si parentes conquerantur, id eſt, ſi parentes inter eos lamententur*, which is as much to ſay, as if the Couſins of ſuch infant haue cauſe to make lamentation or complaint amongſt themſelues, for the ſhame done to their Couſin ſo diſparaged, which in manner is a ſhame to them, then may the next Couſin to whom

Charter, yet being granted by aſſent and authoritie of Parliament, Littleton here ſaith it is a Statute. Vide Lib. 8. the Princes caſe.

This Parliamentarie Charter hath diuers appellations in law. Here it is called Magna Charta, not for the length or largeneſſe of it (for it is but ſhort in reſpect of the Charters granted of priuate things to priuate perſons now adayes being (Elephantinæ Charræ) but it is called the great Charter in reſpect of the great weightineſſe and weighтie greatneſſe of the matter contained in it in few words, being the fountaine of all the fundamentall lawes of the Realme, and therefore it may truly be ſaid of it, that it is magnum in parvo. It is in our bookes called Charta libertatum, & Communis libertas Angliæ, or Libertates Angliæ. Charta de libertatibus, Magna Charta, &c. And well may the Lawes of England be called Libertates, quia liberos faciunt. Magna fuit quondam magnæ reuerentiæ Chartæ. Bracton, 414. & 251. Flet. lib. 2. cap. 48. & lib. 3. cap. 3. Mirror, cap. 2. §. 18. Britton, fol. 177. b.

This Statute of Magna Charta, is but a confirmation or reſtitution of the Common Law, as in the Statute called Confirmatio chartarum, Anno 25. E. 1. it appeareth by the opinion of all the Iuſtices; and in 5. H. 5. tit. Mord. 53. Magna Charta is there vouched, for there it appeareth, that King Iohn had granted the like Charter of renouation of the ancient Lawes. 25. E. 1.

5. H. 5. Mord. 53. Matth. Paris, 246. 278. 248.

This Statute of Magna Charta hath beene confirmed aboue 30. times, & commanded to be put in execution. By the Statute of 25. E. 1. c. 8. iudgements giuen againſt any points of the Charters of Magna Charta, or Charta de Foreſta are abridged void. And by the Statute of 42. E. 3. cap. 3. If any Statute be made againſt either of theſe Charters it ſhall be void. 25. E. 1. ca. 8. 42. E. 3. ca. 1.

¶ *Sur leſtatute de Magna Charta leſtatute de*

de Merton eſt foundue ſur tiel point, viz. Quod hæredes maritentur abſque diſparagatione.

¶ *Foundue.* So as Magna Charta is the foundation of other Acts of Parliament. This Act extendeth as well to females as to males.

¶ *Nul action poet eſte priſe ſur cel ſtatute, intant que il ne vnques fuit view ou oye, &c. Et ſi aſcun action puiſſoit eſte priſe ſur ceſt matter il ſerra intend a aſcun fois eſtre miſe in vre.*

Hereby it appeareth how ſafe it is to be guided by iudiciall preſidents the rule being good, Periculoſum exiſtimo quod bonorum virorum non comprobatur exemplo. And as vſage is a good interpreter of Lawes, ſo non vſage where there is no example is a great intendment, that the Law will not beare it; for ſaith Littleton, If any action might haue beene grounded vpon ſuch matter, it ſhall bee intended that ſometime it ſhould haue beene put in vre. Not that an Act of Parliament by non Vſer can be antiquated or loſe his force, but that it may be expounded or declared how the Act is to be vnderſtood.

Vide Petitiones coram domino rege in Parliamento, fol. 318. E. 1. 39. H. 6. 19. per Aſhton. 6. Eliz. Dier, 229. 23. Eliz. Dier. Nullum breue derrore de iudicio in 5. port. quia nullum breue reperitur. 3. E. 3. 30. 11. H. 4. 7. & 38.

¶ *Si parentes conquerantur.* Of this ſufficient hath beene ſaid before.

¶ *Si les Couſins.* Here Littleton expounded parents to be his couſins, vnder which name of couſins Littleton includeth vncles and other couſins, who when the father is dead are in loco parentum.

Vide Leſtature de Marlebridge, cap. 17. In cuſtodia parentum.

¶ *Ont cauſe a faire lamentation, &c.* Note if they haue cauſe to make lamentation, it ſufficeth though they neuer complaine.

¶ *Pur le hont fait a lour couſin.* For when their couſin is diſparaged in his marriage, it is not only a ſhame and infamie to the heire, but in him to all his blood and kindred.

¶ *Donques poit le procheine couſin a que le enheritance ne poit diſcender enter & ouſter le Gardein in Chiualrie.*

This is worthy the obſeruation, for the words of the ſtatute are generall, Secundum diſpoſitionem parentum, and the conſtruction thereof ſhall be according to the reaſon of the common Law, for the next Couſin to whom the inheritance cannot deſcend, ſhall enter and ouſte the Gardian, and ſhall be in place of a Gardian, as it is in caſe of a Gardian in Socage.

¶ *Et ſil ne veile, vn auter couſin del enfant poet ceo faire.* Still purſuing the reaſon of the Common Law in caſe of Gardian in Socage.

¶ *Et les iſſues & profits prender al vſe del enfant, &c.* This is ſo euident as it needeth no explication. Le fait apt gr er sigt, ou p^r Cosin cõ baylif, ou Gardian?

¶ *Ou auterment lenfant deins age poit enter luy meſme, & ouſte le gardein.* If none of the couſins aforeſaid will enter, then the heire himſelfe may enter. In all which the reaſon of the Common Law is purſued. But what if the heire be diſparaged, and the next of kin doth enter, and when the heire commeth to 14. he agreeth to the marriage? yet ſhall not this giue any aduantage to the Lord, for that he had loſt the Wardſhip before.

Sect.

Section 109.

¶ Of this sufficient hath beene said before.

¶ Item multz auters diuers disparagements y sont, que ne sont specifies en meisme lestatute. Come si lheire que est en gard est mary a vn que nad forsqz vn pée, ou forsqz vn maine, ou que est deforme, decrepite, ou ayant horrible disease, ou graund & continual infirmitie: Et (si soit heire male) si soit marry a feme que est passe lage denfanter. Et multz auters causes de disparagements sont, Sed de illis quære, car il est bon matter dapprender.

ALso there be many and diuers other disparagements, which are not specified in the same statute. As if the heire which is in Ward bee married to one which hath but one foot, or but one hand, or which is deformed, decrepit, or hauing some horrible disease, or great and continuall infirmity. And (if he be an heire male) if he bee married to a women past the age of childe-bearing. And there bee other causes of disparagement, but inquire of them, for it is a good matter to understand.

Sect. 110.

¶ Et des heires males que sont deins lage de 21. ans apres le mort lour ancestor nient marries, en tiel cas le sñr auera le mariage de tiel heire, & aueta temps & space de tender a luy conuenable mariage sans disparagement deins m le temps de 21. ans. Et est ascauoir, que lheire en tiel case poit estier fil voit ee marry ou non, mes si le Sñr que est appel gardein en chiualry a tiel heire tender coueabl mariage deins lage de 21. ans sans disparagement, & lheire ceo refuse, & ne soy marie deyns le dit age,

AND of heires males which bee within the age of 21. yeeres after the decease of their Ancestor, and not married, in this case the Lord shal haue the marriage of such heire, and he shall haue time and space to tender to him couenable marriage without disparagement within the said time of 21. yeeres. And it is to bee vnderstood, that the heire in this case may chuse whether hee will bee married or no, but if the Lord which is called Gardian in Chiualry tenders to such heire couenable marriage within the age of 21. yeeres without disparagement, and the heire refuse, and marry himself within the said age,

¶ *De tender a luy conuenable mariage, &c.* But it is in the election of the Lord whether for the single value the Lord will tender a marriage or no, for hee shall haue the single value without any tender.

And of this there needeth no other explication. The value of the marriage of such an heire is according to the valuation by lawfull tryall, or as much as another had before offered to giue for the same without fraud and couyn.

¶ *Le heire en tiel case poit estier fil voit este marrie, ou non, &c.* And if on the other side, though there be a tender made of a couenable marriage without disparagement, yet the heire may refuse, for in euery marriage there

Lib. 6. fol. 70. Lo. Darcies case.
Vid. Britton, fol. 159. Somb. Cont.
v. Talmon cap. Rop. 5. fol. 126, 127.
Merton, cap. 6. 18. H. 3. 18.
mot 40. 9. 3. 6. in Hador
Son mariage p refusal, le
heir doit alleage un cotha
cause de refuser, dont ipse
poit estr priv. Speech cap
5. Rop. 56.

there muſt bee a free conſent.

¶ *Si tiel heire.* That is, if ſuch an heire to whom a tender hath beene made by the Lord, and by whom a refuſall hath beene made; if ſuch an heire afterwards marrieth another within age, hee ſhall forfeit double the value, but if he before any tender marrieth himſelfe within age, hee ſhall pay but the ſingle value of the marriage.

Neither the ſingle value, nor the double value ſhall bee recouered againſt the heire, but after his full age; but for both theſe the Lord hath a double remedie, viz. an Action as is aforeſaid, or the Lord may retaine the land after full age for his ſatisfaction of both, with this difference, that in the caſe of the ſingle value the taking of the profits ſhall not be accounted parcell of the value, but as a gage or pledge till the heire doe ſatisfie him of the ſingle value; but in caſe of the double value, the perception of the profits ſhall be taken in ſatisfaction of the double value, for the Statute of Merton (which giueth the forfeiture ſaith, Dominus teneat terram, &c. per tantum tempus quod inde percipere poſſit duplicem valorem maritagii: which words (quod inde, &c.) proueth that the taking of the profits ſhall goe in ſatisfaction; but in caſe of the ſingle value, vntill the heire doth ſatisfie the Lord of the ſame.

donques le gardeine aūra l'value del mariage del tiel heire male, mes ſi tiel heire luy n̄ marie deins lage de 21. ans encoſter la volunt le gardeine en Chiualrie, donqz le gardein aūra le double value del mar̄ per force de leſtat̄ ō Merton auantdit come en n̄ leſtat̄ eſt compriſe pluis a pleine.

ragement, and the heire refuſeth this, and doth not marrie himſelfe within the ſaid age, then the Gardein ſhall haue the value of the marriage of ſuch heire male, but if ſuch heire marrieth himſelfe, within the age of 21. yeeres againſt the will of the Gardein in Chiualry, then the Gardein ſhal haue the double value of the Marriage by force of the Statute of *Merton* aforeſaid, as in the ſame Statute is more fully at large compriſed.

No forfeiture of marriage is given by the ſaid Statute of Merton, of an heire female, as appeareth by the ſaid Act; neither at the Common Law could the Lord haue holden the land of the heire female after fourteene yeeres for the value.

Stat. de Merton. cap. 6. 2. E. 2. acc. ſur leſtat. 43. 3. E. 2. ibi. 27. 16. E. 3. b. 14. 18. E. 3. 18. Temps E. 1. acc. ſur leſtat. 43. E. 3. 21. 27. H. 8. 4. Statut. de Merton. cap. 7. 35. H. 6. tit. gard. 71. Lib. 6. fol. 71. Lord Darcies caſe.

Section III.

Lib. 4. fol. 88. in Lunerels caſe. Lib. 6. fol. 26. a. Gregories caſe. 19. R. 2. gard. 195.

¶ *Per Caſtle gard. Wardum caſtri, ſeu caſtle-gardum, ſeu caſtri-gardum.* Hee that holdeth by Caſtle-gard, holdeth by Knights ſeruice, but not by Eſcuage, for Eſcuage is due when the King maketh a Voyage royall out of this Realme (as hath beene ſaid) and the Tenant maketh default, but Caſtle-gard is to be done within the Realme, & without any Voyage royall.

Alſo a certaine terme is appointed for the Seruice of the Tenant that holdeth by Eſcuage, but no certaine terme by Law for him that holdeth by Caſtle-gard. Vide in the Title of Grand Serjeantie, Sect. Hereof ſome

ſect. 95

¶ Item diuers tenants teignont de lour Seignioz p ſeruice de chiualer, & uncoz ils ne teignont per Eſcuage, ne paieront eſcuage, come ceux que teignont de lour Seignioz per caſtle garde, ceſtaſcauoire, a garder vn tower del Caſtle lour Seignioz, ou vn huis ou vn auter lieu del caſtle per reaſonable garniſhment, quant lour Seigni-

Also diuers Tenants hold of their Lords by Knights ſeruice, and yet they hold not by Eſcuage, neither ſhall they pay Eſcuage. As they which hold of their Lords by Caſtle-ward, that is to ſay, to ward a tower of the Caſtle of their Lord, or a doore or ſome other place of the Caſtle vpon reaſonable warning, when their Lords heare that the

oz̄s

ors oyont que enemies voylent venir, ou sont venus en Engleterre. Et en pluseurs autres cases home poit tener per seruice de chiualer, & uncore il ne tient per escuage, ne payera escuage, sicome serra dit en le tenure per Graund Serieantie. Mes en touts cases ou home tient per seruice de chiualer, tiel seruice trait all seignior gard & mariage.

enemies will come, or are come in England. And in many other Cases a man may hold by Knights Seruice, and yet hee holdeth not by Escuage, nor shall pay Escuage, as shall be said in the tenure by Grand Serieanty. But in all Cases where a man holds by Knights Seruice, this Seruice draweth to the Lord ward and marriage.

Castellani, or Constabularii castri, for Keepers or Constables of a Castle.

Vide Mag Chart. cap. 19. 20. W. 1 cap. 7. Bract. lib. 5 fol. 363. Fleta lib. 2. cap. 43.

¶ *A garder vn tower del Castle, &c.* A Tower, or a Doore, or a Bridge, or a Sconce, or some other certaine part of the Castle, for the Tenure must be certaine. And this may be done by the Tenant himselfe or his Deputie.

Magna Chart. cap. 20.

¶ *Del Seignior.* For it cannot be of a Castle of another.

Lord and Tenant by Castle-gard, the Lord granteth ouer his Seigniory to another, (a) the Castle-gard is gone because the grantee hath not the Castle. (b) For the same reason it is, that if one holdeth of me, as of my Manor of D. by fealty and suit of Court, if I grant ouer the services of this Tenant, the suit is gone because the Grantee hath not the Manor. (c) But if the Castle be wholy ruinated, Si Castrum sit penitus dirutum, yet the Tenure remaineth by Knights Seruice, and it goeth in benefit of the Tenant, as to the garding of the Castle vntill it be reedified. But ward and mariage belongeth to the Lord in the meane time. For Littleton in the end of this Section putteth it for a generall rule in all cases where a man holdeth by Knights seruice, it draweth ward and marriage.

(a) Temps E. 2. tit. Ass. 399. 31. E. 1. tit. Ass. 441.
(b) 17. E. 3. 65. 72. 4. E. 3. 42.
(c) Lib. 4. fol 88. Luthrel. case. 3. H. 8. Bendloes, Capels case. 4. E. 3. 55.

If the Tenant make default in garding of the Castle, the Lord may distreine for it, and recouer satisfaction in dammages.

¶ *Per reasonable garnishment.* This warning must be giuen by the Lord or some other for him, and the Tenant need not to stirre vntill he haue such warning.

¶ *Enemies.* which is to be vnderstood of any manner of enemies whatsoeuer. And though Littleton speakes of enemies, yet it seemeth that to keepe a Castle in time of Insurrection and Rebellion (albeit in propriete of speech Rebels are no Enemies) is a tenure by Knights seruice. Vide Hill, 8. E. 1. Midd. Rot. 86.

¶ *Voylent venir.* For preparation is to be made vpon warning before the Enemy bee come indeed into England. This appeareth to bee in time of hostility and warre, or for preparation therefore. But a Tenure to keepe a Castle in time of peace only is no Knights Seruice.

If the Tenant by Castle-gard doe serue the King in his warre, hee shall bee discharged against the Lord, according to the quantity of the time that he was in the Kings host.

Fleta speaketh of an old word called Wardwite, and (saith he) significat quietanciam miseri- cordiæ in casu quo non inuenerit quis hominem ad Wardam faciendam in Castro.

Fleta, lib. 1. cap. 48.

Sect. 112.

¶ Et si vn tenant que tiet de son Seignior per seruice de entier fee de chiualer mourust, son heire dongz esteant de plein age, s. de 21. ans,

And if a Tenant which holdeth of his Lord by the seruice of a whole Knights fee dieth, his heire then being of full age s. of 21. yeeres, then

¶ *Reliefe, releuium.* This word is deriued from the originall before.

Vide Sect. 103.

Note, Reliefe (a) is no seruice but an improuement of the seruice, or an incident to the seruice, for the which the Lord may distreine but cannot haue an Action of Debt, but

(a) Temps E. 1. relief. 13. 41. E. 3. 23. 4. E. 2. nouvric. 210. 7. H. 6. 13. 22. H. 8. Rot. 518. 34. E. 1. nouvric. 233.

but his Executors or Administrators may haue an Action of Debt, and cannot distraine.

And it (b) is to bee vnderstood that feodum militis, a Knights Fee, consisteth of twentie pound land, and hee payeth for his relieſe for a whole Knights fee, the fourth part of his fee, viz. fiue pound, and so according to the rate.

(b) Stat. de 1. E. 2. de militibus. Vide lib. 9. fol. 124. Anth. Lowes case.

donque le Seignior auera C. s. pur relieſe, & del heire celuy que tient per le moitie dun fée de chiualer L. s. & de celuy que tient per le quart part de fée dun chiualer 25. s. & sic que pluis, pluis, & que meins, meins.

the Lord shal haue C. s. for a relieſe, and of the heire of him which holds by the moitie of a Knights fee 50. s. and of him which holds by the fourth part of a Knights fee 25. s. and so he which holds more, more, and which lesse, lesse.

Baronia, a Baronie, or a Barons Fée consisteth of thirteene Knights fées, and the third part of a Knights fee, which amounteth to foure hundred Marks per annum, and the Baron for an entire Baronie payeth for his relieſe an hundred Marks, which is the fourth part of the value of his Baronie.

Comitatus an Earledome, or an Earles fee consisteth of a Baronie, and the third part of a Baronie, which includeth twentie Knights fées amounting to foure hundred pound land per annum, and he payeth for his relieſe for an entire Earledome the fourth part of his reuenue, and that is an hundred pound. All which appeareth by the Statute of Magna Charta, cap. 2. made in the ninth yeare of Henrie the third, at which time there was neither Duke, Marquesse nor Viscount in England, as before is said. But there be Presidents in the Exchequer, that a Dukedome consisting of two Earledomes, viz. eight hundred pound land by the yeare, payeth two hundred pound, and a Marquesse consisting of two Baronies, viz. eight hundred Marks land per annum, and of an Earledome and a halfe, payeth two hundred Marks for his relieſe. What the Viscount should pay for certaine I haue not heard. Before the making of the Statute of Magna Charta the King had rationabile relevium of Noblemen, and it was not reduced to any certaintie, yet ought it to haue beene reasonable and not excessiue.

I haue seene the Record of a Charter made in 20. H. 6. to Henrie Beauchampe, Earle of Warwicke, whereby he was created King of the Ile of Wight, to him and the heires males of his body, his relieſe was incertaine, and not limited by the Statute of Magna Charta.

It is to be obserued that the words of the Statute of Magna Charta, be Hæres Comitis de Comitatu integro & hæres Baronis de Baronia integro, &c. Now what an entire Earledome, and an entire Baronie is, hath beene declared before.

900 marks make an Earldom & a half.

Glanuil. lib. 9. cap. 4. 6. Bracton. lib. 2. fol. 83. Britton. fol. 178. Ockam. 42. F. N. B. 83. 256. Fleta lib. 3. cap. 17. Magna Charta cap. 2.

Vide Bracton fol. 84. 14. H. 4. in recordo longo. 10. H. 7. 19. 20. E. 3. Ass. 122. tit. auowrie. 126. 18. Ass. pl. vltimo. 22. E. 3. 8.

It is also to be obserued, that at and before the Statute of Magna Charta, all Earledomes and Baronies were deriued from the Crowne, and were holden of the King in Capite, and the King would not suffer them to be diuided, or seuered. And such entire Earledomes, and entire Baronies are within the Statute, but at this day Earles and Barons are without such Earledomes and Baronies of the Kings gift in chiefe. For at the creation of an Earle he hath sometimes an Annuitie granted vnto him, and sometime nothing, so as such Earles and Barons so created are clerely out of the Statute of Magna Charta, and are to pay such relieſes as other men that hold of the King in Capite. For as the heire of a Knight shall not pay relieſe vnlesse he hath a Knights fee, &c. so neither the Earle nor Baron shall pay any relieſe by this Statute, vnlesse he hath an Earledome, &c. or Baronie, &c.

16. E. 3. Eschange 2. 46. E. 3. forfeiture 18.

¶ *Son heire de pleine age s. de 21. ans.* And yet in some case the heire shall pay relieſe when he was within age at the time of the death of his Ancestor. As if a man holdeth lands of the King by Knights Seruice in Capite, and of a common person other lands by Knights seruice, & dieth his heire being within age. the King hath all in ward by his Prerogatiue vntill the full age of the heire. In this case the heire shall pay relieſe to the other Lord, for that the King had the wardship of body and lands. And the Lord vpon euerie Discent ought to haue either wardship or Relieſe.

24. E. 3. 24. 26. H. 8. 32. H. 8. cap. 2. in fine.

V. 77. a.

1. E. 3. 6. Pl. Com. 229. 33. E. 3. tit. gard. Stathom.

But if there be Lord and Tenant by Knights Seruice, and the Tenant dieth, his heire being within age, the Lord waiueth his wardship as he may, & taketh himselfe to his Seignior, in this case the Lord shall not haue relieſe at his full age because he might haue had the wardship of the body and land. Lord and Tenant of two Manors by diuers tenures by Knights Seruice, the Tenant is disseised of the one and the Disseisor dieth seised, and the Tenant dieth seised of the other his heire within age, the Lord seised the body and lands of that Manor, and after the heire at his full age recouereth the other Manor against the heire of the Disseisor, he shall pay relieſe for that Manor, and so one Lord of the heire of one Tenant shall haue both wardship during his minoritie, and relieſe at his full age.

¶ Son

Son heire. (k) And yet the succeſſor of a Biſhop or Abbot may pay reliefe by preſcription or grant.

If the Tenant infeoffeth his heire apparent by colluſion, and dieth, (l) his heire of full age, it is a queſtion in our bookes, whether he ſhall haue reliefe either by the Common Law, or by the ſtatute of Marlebridge, ca.6. But now the ſtatute (m) of 13 Eliz.c. 5. hath cleered that queſtion, and that the Lord ſhall haue reliefe where the conueyance is made to any perſon by colluſion, &c.

(k) 3.E.3.13.76. 8.R.2.reliefe,14. 3.H.4.2. 2.E.3.auowrie, 124.
(l) 39.E.3.tit. Reliefe. 24.E.3. 24.E.3. Reliefe, 11. Bracton,lib.2.85.
(m) 13.Eliz.cap.5.

Section 113.

This is euident, and needeth no explanation.

¶ Item home poit tenir ſon fre de ſon Sñr per le ſeruice de deux fées de Chiualer, & donque heire eſteant de pleine age al temps de mort ſon auncestre paiera a ſon Sñr x. ſ. pur reliefe.

ALſo a man may hold his land of his Lord by the ſeruice of two Knights fees, & then the heire being of full age at the time of the death of his Anceſtor ſhall pay to his Lord x. pound for reliefe.

Section 114.

¶ Nota ſi ſoit nai, pier, & fits, & la mere morust viuant le pier de le fits & puis laiel que tient la terre p ſeruice de Chiualer morust ſeiſi, & la terre diſcendiſt al fits la mere, come heire al aiel q̄ eſt deins age: en ceſt cas le Sñr auera le garde de la terre, mes nemy le garde del corps del heire, pur ceo que nul ſerra en gard de ſon corps a aſcun Sñr viuant ſon pier pur ceo que le pier durant ſon vie auera le mariage de ſon heire apparant, & nemy le Sñr. Autrement eſt ou le pier eſt mort viuant la mere, ou le terre tenus en Chi-

NOte, if Grandfather, father, and ſonne, and the mother dieth liuing the father of the ſonne, and after the grandfather which holds his Land by Knights ſeruice dieth ſeiſed, and his land deſcend to the ſonne of the mother as heire to the grandfather, who is within age: In this caſe, the Lord ſhall haue the Wardſhip of the land, but not of the bodie of the heire, becauſe none ſhall be in Ward of his body to any Lord, liuing his father, for the father during his life ſhall haue the marriage of his heire apparent, & not the Lord. Otherwiſe it is where the father dyeth liuing the mother,

¶ *Fitz.* Yet the Father ſhall haue the marriage of his Daughter if ſhee bee his heire apparent, and Littletons reaſon extendeth to the daughter, for that (ſaith hee) the Father ſhall haue the Wardſhip of his heire apparent, within which words the daughter is included, ſo long as ſhe continueth heire apparent.

¶ *Le ſeignior auera le garde del terre.* Note that albeit in this caſe the Law doth giue the cuſtodie of the body to the father, and barreth the Lord thereof, yet the Lord ſhal haue the Wardſhip of the Land by force of the tenure at the firſt creation thereof. And ſo it is if the Father marrieth his heire within age and dieth, yet the Lord ſhall haue the Wardſhip of the land.

¶ *Viuant ſon pier.* This doth not extend to any collateral heire, but onely to the ſonne or daughter being heire apparant; for albeit a man ſhall haue an Action of treſpaſſe, Quare conſanguineum & hæredem cæpit, and albeit the words be Cujus maritagium ad ipſum pertinet, becauſe the well beſtowing of his

Flet. lib. 1, cap. 5. 16.E.3.diſſeiſin,6. 31.E.1. gard.154. 8.E.2.treſp.235. F.N.B.243. Ambroſia Gorges caſe, lib.6.fol.22. 5.Caſes 103. Sect. Prouided

9.E.2.18.E.3.25.29. Aſſ.35. 29.E.3.37.31.E.3. barr.237.

32.E.3. Gard.32. 30.E.3.17. 31.H.6.55. 12.H.4.16. F.N.B.143. 31 E.3. Br.357. 9.E.4.53.

his heire apparent in marriage is a great eſtabliſhment of his houſe yet that is to bee vnderſtood as againſt a wrongdoer but not againſt a gardian in Chiualry, and the mother ſhall haue the like writ for taking away of her ſonne and heire apparent: and yet the mother ſhall not barre the Lord by Knights ſeruice, of his Wardſhip of the body, as Littleton here ſaith, Qui tamen ex filia tua naſcitur in potestate tua non eſt, ſed patris eius.

uaitie diſcendiſt al fits de part ſon pier, &c.

where the land holden in Chiualry deſcends to the ſonne on the part of the father, &c.

Vide Flet lib.1. cap.6. See W.2.c.35.

¶ *A aſcun ſeignior.* Put the caſe there is Lord, & Feme Tenant by Knights ſeruice of a Carue of land, the Feme maketh a feoffment in fee vpon condition, and taketh the Lord to Huſband, and haue iſſue a ſonne, the wife dieth, the iſſue entreth for the condition broken, the Lord entreth into the land as Gardeine by Knights ſeruice, and maketh his Executors, and dieth: in this caſe the Executors ſhall haue the Wardſhip of the land during the minority of the heire, but not the Wardſhip of the body; for albeit the Lord ſeemeth to haue a double intereſt in the Wardſhip of the body, one as Lord, and another as Father, yet as Father, and not as Lord in iudgement of Law, he ſhall haue the Wardſhip of the body of his ſonne and heire apparent, in reſpect of nature, which was before any Wardſhip in reſpect of Seigniories by Knights ſeruice began, and that Wardſhip by reaſon of nature cannot be watued, and claime made in reſpect of the Seigniory. And the Executors of the father ſhall not haue ſuch a Wardſhip which the Teſtator had as father, neither can ſuch a Wardſhip be forfeited by outlawry, becauſe it is due to the father in reſpect of priuity of nature.

33 H.6.55.lib.7. fol.13. in Caluins caſe. Vide Flet, lib.1.c.12. §. cum Patr. deſcodo, &c.

¶ *De ſon heire apparent.* And therefore if the Father be attainted of felony, &c. then cannot the ſonne or daughter be an heire apparent, becauſe the bloud is corrupted betweene them, and conſequently in the life of the father, his ſonne in that caſe ſhall be in Ward.

A woman ſeiſed of lands in fee holden by Knights Seruice, taketh huſband an Alien, and hath iſſue, and the wife dieth, the iſſue ſhall be in Ward, and the Father ſhall not haue the cuſtodie of him, for that in the eye of the Law hee is not his heire apparent, as Littleton him ſpeaketh. Decca

Section 115.

This Section is an addition to Littleton, and therefore I paſſe it ouer; and the rather, for that the ſaid Statute of 4. H. 7. is become of no force, for that by the Statute of 27. H. 8. cap. 10. all vſes are transferred into poſſeſſion.

¶*Nota, ſi home ſoit ſeiſie de Terre que eſt tenus per ſeruice de Chiualer, & fait feoffment en fee a ſon vſe, & maruſt ſeiſie del vſe, ſon heire deins age, & nul volunt per luy declare, le Seignior auera briefe de Droit de gard de corps, & del Terre, ſicome Tenant vſt deuie ſeiſie del demeſne. Et ſi le heire ſoit de pleine age al temps del mozant ſon anceſtor, en tiel caſe il payera reliefe, ſicome il fuiſſoit ſeiſie del demeſne. Et ceſt per leſtatut de anno 4.H.7.cap.17.

NOte, if a man be ſeiſed of land which is holden by Knights Seruice, and maketh a feoffment in fee to his owne vſe, and dieth ſeiſed of the vſe, his heire within age, and no will declared by him, the Lord ſhall haue a Writ of Right of the wardſhip of the body and land, as if the tenant had died ſeiſed of the demeſne. And if the heire bee of full age at the time of the deceaſe of his Anceſtor, in this caſe he ſhall pay reliefe, as if he had beene ſeiſed of the demeſne. And this is by the ſtatute of 4. *H.*7. *cap.*17.

Sect.

Sect. 116.

¶ NOta, il y ad Gardein en droit en Chiualry, & Gardein en fait en Chiualrie. Gardein en droit en Chiualrie est, lou le Seigniour p cause de son Seigniory, est seisie de gard de Terres & del heire, vt supra. Gardein en fait en Chiualrie est, lou en tiel case le Seigniour apres son seisin graunt per fayt ou sauns fayt le Gard des Terres, ou del heire ou dambideux a vn auter. Per force de quel grant le Grauntée est en possession, donque est le Grauntée appell Gardeine en Fait.

NOte, there is Gardian in right in Chiualrie, and Gardian in Deed in Chiualrie. Gardian in Right in Chiualrie is, where the Lord by reason of his Seigniory is seised of the Wardship of the Lands, and of the Heire, *vt supra.* Gardian in Deed in Chiualry is, where in such case the Lord after his Seisin grants by Deed or without Deed, the Wardship of the Lands, or of the Heire, or of both, to another, by force of which Grant the Grantee is in possession, then is the Grantee called Gardian in Fait, or Gardian in Deed.

HEre Littleton diuideth Gardian in Chiualry, into gardian in Right, and Gardian in Fait. And this is euident, and needeth no explanation.

¶ *Per fait ou sauns fait.* Here Littleton affirmeth, That the Wardship of the body may be granted ouer without Deed, and herein note a diuersity betweene an originall Chattell of a thing that properly lieth in grant, and a Chattell deriued out of a Freehold of any thing that lieth in grant. As for example, if a man make a Lease for yeeres of a Milleine, this cannot be done without deed, neither can the Lessee assigne it ouer without deed, because it is deriued out of a Freehold that lieth in grant: but the Wardship of the body is an originall Chattell, during the minority deriued out of no Freehold, and therefore as the Law createth it without deed, so it may be assigned ouer without Deed.

12.E.3.tit.Grant.59. 7.E.3.63. 26.E.3.65. 28.E.3.96. 14 E.4.Act. sur Lett.17. 25.E.3.40. 31 E 3.Vouch.5. 46.E.3 25. 20.E.4.16. 12.H.4.19. 5.H.7.17.36. 22.El Dyer.371. 35.H.8. Br. tit. Grant. 85.

A Corporation aggregate of many, cannot make a Lease for yeeres without Deed, in respect of the quality of the Incorporation, but their Lessee may assigne it ouer without Deed.

36.H.8.tit.Grant.B 125. 22.H.6.34. 19.H.6.33.

If an Aduowson be holden by Knights seruice, and the Tenant dieth, his heire being within age, the Lord cannot grant the Wardship of the Aduowson without Deed, because it is deriued out of an inheritance that lieth in grant, and passeth not by Liuery: for, Ius præsentandi est incorporale, and so (albeit there be diuersity of opinion in our bookes) is the Law taken at this day.

24.E.3.69.70. 5.E.3.58. 43.E.3.15. 5.H.7.36. 14.H.7.16. 15.H.8.8. Bract.366. 368.246. 43.E.3.1.6. 5.H.7.37. 11.H.6.4. 6.H.7.3. 18.H.8.16. Eli.Dyer.323.

By 12 Ca. 2. 24. All Tenures by K^t seruice, & Soccage in capite are turned into common Soccage, & discharged of Homage &c. And by y^e Statute any father by act executed or by will in writing, disposes of y^e tuition of his children under y^e age of 21 years to such persons [except Popish recusants] as he shall think fit.

CHAP.

Chap. 5. Sect. 117.

Socage.

Mirror.ca.1.Sect.3.

4.H.7. ca. 19.
Lib.4. Tiringhams case fo.39. & 4.H.7,ca.12.

Tenure in Socage. Agriculture or tillage is of great account, in law, as being very profitable for the Common-wealth, wherein the goodnesse of the habit is best knowne by the situation: For, by laying of Lands, vsed in tilth, to pasture, sir maine inconueniences doe daily increase. First Idlenesse, which is the ground & beginning of all mischiefes. 2. Depopulation, and decay of townes; For where in some townes 200. persons were occupied, and liued by their lawful labors, by conuerting of tillage into pasture, there haue beene maintained but two or three heardmen: And where men haue beene accounted sheepe of Gods pasture, now become sheepmen of these pastures. 3. Husbandry, which is one of the greatest commodities of the Realme, is decayed. 4. Churches are destroyed, and the seruice of God neglected by diminution of Church liuings, (as by decay of tithes, &c.) 5. Iniury and wrong is done to Patrons and Gods Ministers. And 6. The defence of the Land against forraine enemies is enfeebled and impaired, the bodies of husbandmen being more strong and able, and patient of cold, heat, and hunger, than of any other.

C Tenure en socage est, lou le Tenant tient de son seignior son tenement p certein seruice pur touts maners de seruices, issint que les seruices ne sont pas seruices de chiualer: Sicome lou home tient son terre de son seignior per fealty & per certeine rent p touts maners de seruices, ou lou home tient per homage & fealtie & certaine rent pur touts maners de seruices, ou lou il tient per Homage & Fealty p touts maners de seruices, car Homage per soy ne fait pas seruice de chiualer.

Tenure in Socage, is where the tenant holdeth of his Lord the tenancie by certaine seruice for all manner of seruices, so that the seruice bee not Knights seruice: As where a man holdeth his Land of his Lord by Fealty and certaine rent, for all manner of seruices: or else where a man holdeth his Land by homage, fealty, and certaine rent, for all manner of seruices, for homage by it selfe maketh not Knights seruice.

The two consequents that follow of these inconueniences, are first the displeasure of Almighty God; and secondly the subuersion of the Policy and good Gouernment of the Realme, and all this appeareth in our bookes. And the Common law (a) giueth errable land (which anciently is called Hyde & gaine) the preheminencie & precedencie before meadowes, pastures, woods, mynes, and all other grounds whatsoeuer: and *aueria carucæ the beasts of the plough haue in some cases more priuilege than other cattell haue. And amongst the Romans agriculture or tillage was of high estimation, insomuch as the Senators themselues would put their hand to the plough, and it is said, That neuer prospered tillage better, than when the Senators themselues plowed (such force hath the example of superiors) whereof three famous Romans in their seuerall kinds spake.

(a) 20.E.3. Admeasurement 8.14. Ass.21. 24.E.3.25. * Mirror. Bracton fo.217. Fleta lib. 2.ca.41. Regist. orig.97. Ockam.38.39.4.E.3.1.a. 18.E.2 tit. action sur lestat.45. Temps E.1. Assurie 230. 29.E.3.16. 17.

Cic.lib.1.offic.

Omnium rerum ex quibus aliquid exquiritur nihil agricultura melius, nihil vberius, nihil dulcius, nihil libero homine dignius.

Virgil.lib.1.Georg.

O Fortunatos nimium, sua si bona norunt
Agricolas, quibus ipsa procul discordibus armis
Fundit homo facilem victum iustissima tellus.

Senec. in Epist.

Nullum laborem recusant manus quæ ab aratro ad arma transferuntur &c. fortior autem miles ex confragoso venit, sed ille vnctus, & nitidus in primo puluere deficit. But now let vs peruse our Authors words.

C *Socagium.*

¶ *Socagium.* Littleton in this Chapter Sect. 119. fetcheth this word from the originall Socagium idem est quod seruitium socæ, & soca idem est quod caruca. s. vn soke ou vn caruc. And Bracton agreeth herewith. Dicitur socagium (saith he) à socco, & inde tenentes dicuntur socmanni (b) eo quod deputati sunt tantummodo ad culturam. And Beuerth signifieth the seruice of plough and cart. It is to be obserued that in the booke of (c) Domesday, Land holden by Knights seruice was called Tainland, and Land holden by Socage, was called Reueland, which appeareth in that it is said there, Hæc terra fuit terra regis Edwardi Taineland sed postea conuersa est in Reueland. And in that booke they that held in Socage were called by seuerall names, as Sochemanni or Sokemanni, which still continueth: sometime * Coleberti, i. qui tenent in liberum socagium per redditum, and sometime they are called Radchenestres, i. liberi homines, qui tamen arabant, herciabant, falcabant, metebant, &c. And here it appeareth how necessary it is, that words be fetched from their originalls, and our Author Est verus Etimologus both in this and in many other places in his (d) three bookes. And it is to be obserued once for all, that the legall termination of (agium) in composition signifieth seruice or duty, as homagium the seruice of the man, Estuagium, seruitium debiti (e) Socagium seruitium socæ, hidagium the duty to be paid for a hide or plough-land, and so of corragium, coragium, carnagium, cariagium, burgagium, villenagium, and guidagium, (which one describeth thus) quod datur alicui vt tuto conducatur per loca alterius, and the like.

Bracton lib.2. fol.77.
(b) Glanuil. lib.7. cap.9. & 11. & lib.9. ca.4.
Fleta lib.1. ca.8. & lib.3. ca.14. & 16.
Britton fol.164.
(c) Domesday.
Herefordsc.
Vid. deuant. Sect 120
Sudru.
Wendeford.
Weicesterse.
* Mich. 10. E.3. Coram rege Wilts in Thesaur.
(d) For Etimologies vid. Sect. 95. 154. 164. 204. 234 267 268. &c.
(e) Fleta lib.3. ca.14.
Bracton. lib.2. cap.16.
Britton fol.164.
(f) Mirror, ca.1. sect.18.

¶ *Iffint que les seruices (f) ne sont pas seruices de Chivaler.* And in the next Section he saith, and euery tenure, that is not a tenure in Chiualry, is a tenure in Socage, Ex donationibus autem feoda militaria, vel magnam Seriantiam non continentibus, oritur nobis quoddam nomen generale, quod est socagium. Here Littleton speaketh of Tenures of common persons, for grand Seriantie is not Knights seruice, and yet it is not a tenure in Socage, as shall be said hereafter. Also here he meaneth temporall seruices, and not Frankalmoigne, as by the examples he put is manifest, and as in his proper place shall appeare more at large. Also here Littleton speaketh of Socage largely taken, and so called ab effectu, that is, all tenures that haue the like effects and incidents belonging to them, as Socage hath, are termed tenures in Socage, albeit originally seruice of the plough was not reserued: as if originally a Rose, a paire of gilt Spurs, a Rent, and such like were reserued, or that the Tenants in Condemnatos vltrices manus mittant vel alios suspendio, alios membrorum detruncatione, &c. puniant, these are said to be tenures in Socage ab effectu, for that there shall be like Gardein in Socage, like reliefe, and such other effects and incidents as a Tenure in Socage hath, and are so termed to distinguish the same from Knights seruice. Nay, the worst Tenure that I haue read of, of this kind, is to hold lands to be Maior seeleratorum condemnatorum, vel alios suspendio, alios membrorum detruncatione vel aliis modis iuxta quantitatem perpetrati sceleris puniat, (that is) to be a Hangman or Executioner. It seemeth in antient times such officers were not voluntaries, nor for lucre to be hired, but els they were bound thereunto by Tenure. And so note that some Tenures in Socage are named a calla, and some and the greater part ab effectu.

Ockam, cap. quæ per solam consuetudinem, &c.

Ockam fo.31.a.& b.

¶ *Car homage de soy ne fait seruice de Chiualer.* But it is a presumption where homage is due, that the land is holden by Knights seruice, as hath beene said.

Sect. 118.

¶ Item hoe poit tenir de son Sr̃ per fealty tm̃, & tiel tenure est tenure en socage. Car tiel tenure que nest pas tenure in chualry, est tenure en socage.

ALso a man may hold of his Lord by fealty only, and such tenure is tenure in socage: for euery tenure which is not tenure in Chualry, is a tenure in Socage.

v. supra a.

Of this sufficiently hath beene said before.

Sect. 119.

¶ Et il est dit, que la cause pur que tiel tenure est dit ad is nosme de tenure en socage,

AND it is said that the reason why such Tenure is called, and hath the name of tenure in Socage,

¶ *Temps de memory.* Time of memorie is when no man aliue hath had any proofe

proue to the contrary, nor hath any conuſance to the contrary, as ſhall bee hereafter ſaid in his proper place. And of neceſſity this change hereafter ſpoken of muſt bee before time of memory, for within time of memory, the ſeruices of the plough cannot be changed into money by conſent of the tenant, and the deſire of the Lords, &c. into an annuall rent, neither by releaſe or confirmation or other conueyance ſo long as the ſeigniory remaineth, as ſhall be ſaid in his due place.

Cap. burgage. Sect. 170.

Mirror. cap. 2. ſect. 18. Vid. 19. E. 2. Auowrie. 224. 3. E. 2. accon. ſur. leſt. 24. 10. E. 3. 24. 20. E. 3. Auowrie. 124. 39. E. 17. 39. Aſſ. p. 3. 20. Aſſ. 1.

Cap. confirmation. Sect. 539.

¶ *Deuoient venir one lour ſokes.* The plough is named propter excellentiam, but the ſickle, and the ſythe, for the reaping in harneſt & ſuch like, are alſo included. For as Carucata terræ, a plough land, may containe houſes, milles, paſture, medow, wood, &c. as pertaining to the plough, ſo vnder the ſeruice of the plough all ſeruices of tillage or husbandry are included.

5. E. 3. 161. 6. E. 3. 283.

¶ *Vncore le noſme de Socage demure.* Although the cauſe wherevpon the name of Socage firſt grew bee taken away, yet the name remaines the ſame it hath beene, and is vſed to diſtinguiſh this tenure frõ a tenure by Knights ſeruice. Nomina ſi neſcis perit cognitio rerum. Et nomina ſi perdas certè diſtinctio rerum perditur. Therefore the names of things (as Litleton here teacheth) are for auoiding of confuſion diligently to be obſerued.

¶ *Deuoient venir one lour ſokes.* The plough is named propter excellentiam, but the ſickle, and the ſythe, for the reaping in harneſt & ſuch like, are alſo included. For as Carucata terræ, a plough land, may containe houſes, milles, paſture, medow, wood, &c. as pertaining to the plough, ſo vnder the ſeruice of the plough all ſeruices of tillage or husbandry are included.

eſt ceo; Quia ſocagium idem eſt quod ſeruitium ſocæ, & ſoca idem eſt quod caruca, s. vn ſoke ou vn carue. Et en ancient temps deuant le limitation de temps de memorie grand part de les tenants que tyendront ô lour Seignios per ſocage, deuoient vener oue lour ſokes, chescun de les dits tenants pur certein iours per an pur arer & ſemer les demeſnes le Seignior, & pur ceo que tielx ouerages, fueront fait pur le viuer & ſuſtenance de lour Seignios, ils fueront quits enuers lour Seignios, ô touts maners de ſeruices, &c. Et pur ceo que tielx ſeruices fueront faits oue lour ſokes, tiel tenure fuit appel tenure en ſocage. Et puis apres tiels ſeruices fueront changes en deners, per conſent des Tenants & per deſire des Seignios, s. en vn annuell rent, &c. Mes vncore le noſme de Socage demurt, & en diuers lieux les Tenants vncore font tiels ſeruices oue lour ſokes a lour Seignios, iſſint que touts maners ô tenures q̃ ne ſont pas tenures p ſeruice de Chiualer, ſont appels tenũs ſocage.

is this, becauſe *Socagium idem eſt, quod ſeruitium Socæ*, and *Soca, idem eſt quod caruca, &c.* A ſoke or a plough. In ancient time before the limitation of time of memory, a great part of the Tenants which held of their Lords by Socage, ought to come with their ploughes, euery of the ſaid Tenants for certaine dayes in the yeere to plow and ſow the demeſne of the Lord. And for that ſuch workes were done for the liuelihood and ſuſtenance of their Lord, they were quit againſt their Lord of all manner of ſeruices, &c. And becauſe that ſuch ſeruices were done with their ploughs, this tenure was called tenure in Socage. And afterward theſe ſeruices were changed into money by the conſent of the Tenants, and by the deſire of the Lords, *viz.* into an annuall rent, &c. But yet the name of Socage remaineth, and in diuers places the Tenants yet doe ſuch ſeruices with their ploughs to their Lords, ſo that al manner of Tenures which are not Tenures by Knights Seruice, are called Tenures in Socage.

Sect. 120.

¶ Item si home tient de son Seignior per escuage certaine, s. ẽ tiel forme quant lescuage curge, & est assesse per Parliament a griender summe ou meinder summe, que le tenant paiera a son Seignior forsque demy marke pur escuage, & nient pluis ne meins, a quel graund summe, ou a quel petite summe q̃ lescuage curge &c. tiel tenure est tenure en Socage, & nemy service de chivalrie. Mes lou le summe que le tenant paiera pur lescuage est non certaine, s. lou il poit estre q̃ l'summe q̃ le tenant paiera pur lescuage a son Seignior poit estre a vn foits le greinder & a auter foits le meinder, solonque ceo que est assesse &c. donques tiel tenure est tenure per service de chivaler.

ALso if a man holdeth of his Lord by escuage certaine .s. in this manner, when the escuage runneth, and is assessed by Parliament to a greater or lesser summe, that the Tenant shall pay to his Lord but halfe a Marke for Escuage, and no more nor lesse, to how great a summe, or to how little the escuage runneth, &c. Such tenure is tenure in Socage, and not Knights Seruice, but where the summe which the tenant shall pay for Escuage is vncertaine, .s. where it may bee that the summe that the tenant shall pay for escuage to his Lord may be at one time more, and at another time lesse according as it is assessed, &c. such tenure is tenure by Knights Seruice.

¶ *Escuage certein.* Is not in rei veritate seruitium Scuti, which is to bee done by the body of a man, but it is seruitium Crumenæ, of money, which is to bee drawne out of the purse, and that is in effect a Tenure in Socage, wherein it is to be obserued, that the seruice of payment of money is the more base, and lesse profitable for the Common-wealth in this case, and hereof somewhat hath beene said before in the chapter of Escuage, Sect. 98, 99. 15 E.2.tit. auowrie 215. 31.E.1. Ass.441. 26.Ass.66.5.E.3.6.

If a man hold by Homage, Fealty and Escuage, s. by an halfe penny, when Escuage runs at forty shillings, this is a tenure in Socage, and no Knights Seruice, for two causes.

First, It is Socage Tenure, because of the certainty, for to the Tenure in Socage, certa seruitia doe euer belong, so as the Husbandman may the rather liue in quiet. 5.E.4.128. Vid. Rot.Parl. 4.E.3.nu.19. Clauerings case excellently resolued in Parliament. Hill.3.E.2.coram Rege Rot.34. Agnes Frowicks case.

Secondly, Escuage is to be paid at euery time when it is assessed, and here it is not to bee paid, but when it amounteth to forty shillings.

Sect. 121.

¶ Item si home tient sa tẽ pur paier certaine rent a son seignior pur Castle-garde, tiel tenure est tenure ẽ socage: Mes lou l'tenant doit p

ALso if a man holdeth his land to pay a certaine rent to his Lord for Castle-gard, this Tenure is Tenure in Socage, but where the Tenant ought

¶ Herein the difference standeth thus. If a rent bee paid for Castle-garde it is cleere a Socage tenure, as it is agreed in Lutterels Case according (Vide sect.88.89.)

Vide lib. 4. fol. 88. in Lutterels case. 19. R. 2. gard. 195. 26. Ass. 66. F. N. B. 83. 256. Lib. 6. fol. 20. Gregories case.

according to Littletons opinion, but if a summe in grosse or other thing bee voluntarily paid or given by the Tenant, luym̃, ou pvn auter faire Castle-garde, tiel tenure est tenure per seruice de chiualer. by himselfe or by another to doe Castle-gard, such Tenure is Tenure by Knights Seruice.

and voluntarily received by the Lord in lieu of Castle-gard, yet the Tenure by Knights seruice remaineth. Vide Sect. 88. 89. 98. 99.

Sect. 122.

IT is called Rent seruice, because it is accompanied with some corporall Seruice, as Fealty at the least, in respect whereof the Lord may distraine for it of common right. See more of this matter in the Chapter of Rents.

ITem en touts cases lou l' tenant tient del Seignior a paier a luy ascun certeine rent, cel rent est appelle rent seruice.

ALso in all cases, where the tenant holdeth of his Lord to pay vnto him any certaine rent, this rent is called Rent Seruice.

Sect. 123.

EN tiels tenures en Socage. Ita man be seised of a rent charge, rent secke, common of pasture, and such like inheritances, which doe not lye in tenure, and dieth his heire within age of 14. yeeres. In this case, the heire may chose his Gardein, but if hee bee of such tender yeeres as he can make no choice then (if the father hath made no disposition of the custody of the child) it were most fit, that the next of kin to whom the inheritance cannot descend should haue the custody of him. And whosoeuer taketh the rent, &c. the heire shall charge him in an account. But if he hold any

Vide le statute de 4. & 5. Ph. & Marie. cap. 8.

ITem en tiels tenures en socage si l' ad issue & deuie, son issue est eãt deins lage d̃ 14. ãs donques l' prochaine amy del heire a q̃ l'heritage ne poit discẽdr auer la gard̃ d̃ la terr̃ & del heir iesq̃ al age del heir de 14. ans, & tiel Gardein est appelle gardein en socage. Car si la terre descẽdist al heire de pt le pier, donques la mere, ou auter prochein cosen de pt le mere aura la garde. Et si le terr̃ discendist al heire de part la mere, donques le pier ou le prochein amy de part del pier auera le garde de tiels terrs ou tents. Et quant l'heire vient al age de 14. ãs compleat, il poit enter & oustre le Gardein en Socage, &

ALso in such tenures in Socage if the Tenant haue issue and dye, his issue being within the age of 14. yeeres, then the next friend of that heire to whom the inheritance cannot descend shall haue the wardship of the land & of the heire vntill the age of 14. yeeres, & such Gardeine is called Gardeine in Socage. For if the land discend to the heire of the part of the father, then the mother, or other next Cousin of the part of the mother, shall haue the wardship. And if land discend to the heire of the part of the mother, the the father or next friend of the part of the father shall haue the wardship of such lands or tenements. And when the heire commeth to

occupier la terre luy meſm ſil voit. Et tiel Gardeine en ſocage ne prendra aſcuns iſſues ou profits de tielx terres ou tenements a ſon vſe demeſne, mes tantſolement al vſe & profit del heire, & del ceo il rendra accompt al heire quant pleaſt al heire apres ceo que lheire accompliſh lage de xiiii. ans. Mes tiel Gardein ſur ſon accõpt auera allowãce de touts ſes reaſonable coſts & erpẽces en touts choſes, &c. Et ſi tiel gardein maria lheire deins 14. ans, il accõptera al heire, ou a ſes executors de value del mariage, comẽt que il ne prift riens pur le value del mariage, pur ceo que il ſerra rette ſa folly demeſne, que il luy voiloit marier ſans prender la value del mariage, ſinon que il luy maria a tiel mariage que eſt tant en value come le mariage del heire, &c.

the age of 14. yeeres compleat he may enter and ouſt the Gardian in Socage, and occupy the land himſelfe if he will. And ſuch gardian in ſocage ſhall not take any iſſues or profits of ſuch lands or tenemẽts to his owne vſe, but onely to the vſe and profit of the heire, & of this he ſhall render an account to the heire when it pleaſeth the heire after hee accompliſheth the age of 14. yeeres. But ſuch Gardian vpon his account ſhall haue allowance of all his reaſonable coſts and expences in all things, &c. And if ſuch Gardian marry the heire within age of 14. yeeres he ſhall account to the heire or his executors of the value of the marriage, although that hee tooke nothing for the value of the marriage, for it ſhall be accounted his owne folly, that he would marry him without taking the value of the marriage, vnleſſe that hee marrieth him to ſuch a marriage that is as much worth in value as the marriage of the heire.

Land in Socage, in that caſe the Gardian in Socage ſhall take into his cuſtody as well the Rent charges, &c. as the land holden in Socage, becauſe hee hath the cuſtody of the heire.

¶ *Si le tenant ad iſſue & deuie.* The ſame law it is if the tenant hath no iſſue; but a brother or coſin within age of 14. yeeres at the time of his death. (a) Alſo this doth extend as well to iſſue female as to iſſue male. (a) 10. R. 2. Account, 132.

¶ *Deins lage de 14. ans.* Of this ſufficient hath beene ſpoken in the next preceding chapter. *fol. 103. & 104.*

¶ *Donques le procheine Amy del heire a que le enheritance ne poit diſcender.* The next friend of the heire, &c. Here Amy or friend is taken for the next of blood, ſo the effect of it is that the next of his blood to whom the inheritance cannot diſcend, whereby affinity without blood is excluded. Glanuil. lib. 7. cap. 11. Britton. 163. Fleta lib. 1. cap. 9. Stat. de Hibernia, tit. Partition.

¶ *Le prochein.* The next.

Loquela oppoſit missi in bellicitate del cone on talle cr.

(b) If there be three brethren, and the youngeſt holdeth land in Socage, and hath iſſue and dieth his iſſue within age of 14 yeeres both the Uncles are in equall degree, and yet the eldeſt ſhall be Gardian, becauſe in equall degree the Law preferreth him. (b) Vid. 30. Aſſ. 47.

(c) And yet if lands holden in Socage be giuen to a man and to the heires of his body, and he dieth his heire within age, the next coſin of the part of the father albeit hee bee worthier ſhall not bee preferred before the next coſin of the part of the mother, but ſuch of them as firſt ſeaſeth the heire ſhall haue his cuſtody: But if lands bee giuen in Frankmarriage, and the Donees haue iſſue and (c) Pl. com. Carels caſe. 47. H. 3. Gard. 146.

dye their iſſue within age of 14. yeeres, the next of kin of the part of the mother, ſhall haue the cuſtody of the body, and not the next of kin of the part of the father albeit hee firſt ſeaſed it, becauſe the mother was the cauſe of the gift. If a man be ſeiſed of lands holden in Socage of the part of his father, and of other lands holden in Socage of the part of his mother, and dieth, his iſſue being within the age of 14. yeeres. In this caſe ſuch of the next of

of kin of either side as first happeth the body of the heire shall haue him, but the next of blood of the part of the father shall enter into the lands of the part of the mother, and the next of kin of the part of the mother, shall enter into the lands of the part of the father.

(d) If A. be Gardian in Socage, of the body and lands of B. within the age of fourteene yeeres, A. shall be Gardian in Socage per cause de Gard. But an Infant within age, that (e) is not in the custody of another, cannot be Gardian in Socage, because no writ of account lieth against an infant. And herewith agreeth Bract. (f) and yeelds this reason, Alium regere non potest, qui seipsum regere non nouit. And Fleta saith (h) That minor minorem custodire non debet, alios enim præsumitur male regere qui seipsum regere nescit: And by like reason an Ideot, a man non compos mentis, a Lunatike, a man cæcus & mutus, or surdus & mutus, or a Leper remoued by a writ de Leproso amouendo, cannot be Gardian in Socage, but in the case of Gard per cause de Gard, there lieth an Action of Account against A. in the case aboue said.

(d) F.N.B.139.b.Regist.
(e) 7 E.3. 46.
16.E.3.ac.52.
21.E.3 8.3.E.3. Enfant 9.
17.E.2. Account 121.
26.E.3.63. 10.H.6.14.
F.N.B. 118.
(f) Bract li.2 fo.88.
(h) Flet.li.1.ca.10.

¶ *A que le heritage ne poet descender.* (i) Nullus hæredipetæ suo propinquo vel extraneo periculosa sane custodia committatur. Note (k) this word (Poet) may or can. (i) And therefore this doth not only exclude an immediate discent, but all possibility of discent. As if a man hath issue two sonnes by seuerall Venters, and hauing lands holden in Socage of the nature of Burgh English, dieth, the younger brother within age of 14. yeeres, (m) the elder brother of the halfe blood shall not haue the custody of the land, because by possibility the elder may inherit the land, for if the youngest dye without issue, and the land discend to an vncle, the elder brother of the halfe blood may be heire vnto him: and herewith doe agree our ancient Authors: (n) Hæres Sokmanni sub custodia capitalium Dominorum non erit, sed sub custodia consanguineorum suorum propinquorum, hoc est, eorum qui coniuncti sunt iure sanguinis, & non iure successionis, ex parte quorum non descendit hæreditas, & regulariter verum est, quod nunquam remanebit aliquis in custodia alicuius, de quo haberi possit suspitio, quod velit ius clamare in ipsa hæreditate, & vnde si plures sint filiæ & hæredes & tenere debeant in Socagio, nulla debet esse in custodia alterius. (o) And this is contrary to the Ciuill law; for, Leges Ciuiles impuberum tutelas proximis de eorum sanguine committunt, siue agnati fuerunt, siue cognati, vnicuique, videlicet, secundum gradum & ordinem qui in hæreditate pupilli successurus est. But this the Law of England saith, Est quasi agnum lupo committere ad deuorandum.

(i) Lib.Rub. cap.70.
(k) Glanu.li.7.ca.11.
(l) Pl.Com. Carrels case.
(m) Lit.li.1.fo.:,3.
(n) Bract lib. 2. fol.87. Bri.fo.163.b.Fle.l.1.c.10. 28.E.1.Stat.1.Forteſc. c.40.
(o) Forteſc. vb.supr.Statut. de Homagio capiendo,temps E.1.

¶ *Donques le mere.* Note, albeit Land cannot discend to the mother from her sonne, (as hath beene said) because inheritance cannot ascend, yet here it appeareth by Littleton, That she is next of blood, for that none (as hath beene said) can bee Gardian in Socage, but the next of blood, and the like is to bee said of the Father, as hereafter next appeareth.

¶ *Donques le Pier.* By this it appeareth, that the father in case of a tenure in Socage shall be Gardian in Socage, and shall not haue the custody of his eldest sonne, in respect of his paternall naturall custody, (as he shall haue in case of a tenure by Knights seruice, as before appeareth) but as Gardian in Socage: and the reason of the diuersity is, for that in the case of a tenure in Socage, the father must by Law be accountable to the sonne both for his marriage, and also for the profits of his Lands, which he should not be if he had the custody of his eldest sonne in this case as his father, in respect of nature, and the Act of Law neuer doth any man wrong.

84. b.

But no Lord or other person in respect of any tenure by Knights seruice or otherwise shall haue the custody of any childe that is heire apparant to his father, but the Father only during his life, as hath beene said before. *Sect. 114*

It is to be obserued, that in the Lawes of England, there are three manner of Gardianships, viz by the Common Law, by Statute Law, and by Custome. By the Common Law there are foure manner of Gardians, viz. Gardian in Chiualry (whom Littleton hath described before Section 103. &c.) Gardian by nature, as the Father of the eldest sonne, of whom Littleton hath spoken Section 114. Gardian in Socage treated of by Littleton in this Section, and Gardian per cause de nurture, all frequent in (a) our Bookes. By Statute, viz. the Statute in 4.& 5. Phil. & Mariæ, of women children, and that is in two manners, either of the father or mother without assignation, or of any other to whom the father shall appoint the custody, either by his last Will, or by any Act in his life time, whereof you shall reade at large (b) in Ratcliffes Case in my Reports.

(a) 8.E.3.43. 8.E.4.5.
(b) Lib 3.fol.37.Ratcliffes case.
(c) 32 E 3 gard.31. 8.R.2.gard.166.

(c) Lastly, by Custome, as of Orphans by the custome of the City of London, and of other Cities and Boroughes.

¶ *Tantsolement al vse & profit del heire.* And therefore Gardian in Socage shall not forfeit his interest by outlawry or attainder of felony or treason because he hath nothing to his owne vse, but to the vse of the heire. by such forfeiture ye Heir should lose his Inheritance 2. Cro: 99

Also

Also if the mother be Gardian in Socage, and taketh husband, and dieth, the husband shall not haue this custody by Surui∣uour, because the wife had it en auter droit, in the right of the heire. Pl. Com.

A Gardian in Socage shall not (d) present to a benefice in the right of the heire because he cannot be accomptable therefore, for that he can make no benefit thereof, for the Law doth abhorre simony or any corrupt Contract for benefices, and therefore in that case the heire shall present himselfe, and Britton speaking of these Gardians said well, Les queux gardeins sont plus seriants que gardeins, (that is) which gardians are rather seruants than Gardians. 17 E. 3. Fitz.

(d) 8. E. 2. præsentment 10. 7. E. 39. 27. E. 3. 89. 29. E. 3. 5. F. N. B. 33. 31. E. 3. Bloppel, 340. Britton 163. 164. Fleta lib. 1. cap. 10.

¶ *Il rendra account, &c. apres que lheire ad accompliſhe lege de 14. ans.* This point hath beene much controuerted in our bookes, and the causes of the doubts haue beene, first vpon the words of the statute of (e) Merlebridge, ca. 17. 2. Vpon the originall writ of Account against the Gardian in Socage. The words of the statute be Cum ad legitimam ætatem peruenerit sibi respondeat, &c. and legitima ætas, (f) lawfull age, is xxi. yeeres. Also the writ of Accompt reciteth the said statute, Quare cum de communi consilio regni nostri prouisum sit quod custodes terrarum & tenementorum quæ tenentur in Socagio hæredibus terrarum & tenementorum illorum cum ad plenam ætatem peruenerint reddant rationabilem compotum, (g) whereupon it is gathered that no action of account did lye against the Gardian in Socage at the Common Law, vntill the heire be of his lawfull age of 21. yeeres. But as to the first (legitima ætas) as the statute (h) speaketh, or plena ætas (as the Writ doth render it) are to be vnderstood secundum subiectam materiam, that is of the heire of Socage land, whose lawfull and full age, as to the custody or Gardianship is 14. And as to the recitall of the statute, (i) it is euident that an Action of Account did lye against Gardian in Socage at the Common Law. And that the statute was made in affirmance or declaration of the Common law, for the statute speaketh only De custodia parentum, that is of a Gardian in right, but yet an action of Account lyeth against him that occupieth the land as Gardian, albeit he be not of the blood (as hereafter shall be said.) And vpon consideration had of the said Statute and of all the bookes, it was adiudged in the Court of Common Pleas, Pasch. 16. Eliz. rot. 436. according to the opinion of Littleton, that the heire after the age of 14. yeeres shall haue an action of Account against the Gardian in Socage, when he will at his pleasure, and so is an ancient question well resolued.

(e) It is called the statute of Merlebridge, because the Parliament in 52. H. 3. was holden there.
(f) 16. E. 3. wast. 100. 18 E. 3. 55. 77. 29. E. 3. 5. Vide 32. E. 3. Gard. 31. F. N. B. 118. b. 6. E. 3. 38.
(g) 16. E. 2. Account 120. 17. E. 2. ibid 121.
(h) 2. E. 2. Accounts. 14. E. 3. ibid. 3. Mar. 137. Keylwey 131.
(i) 18. E. 2. Auowrie 220.

Britton was of opinion that the statute of Merlebridge which gaue the Capias in Account, extended to Gardian in Socage, for he wrote before the Statute of W. 2. cap. 11. But later bookes haue ouer-ruled this point, that no Capias lieth against Gardian in Socage, for the statute extendeth to Bailifes only; Neither doth the statute of W. 2. extend to Gardian in Socage, for that speaketh only De seruientibus, ballivis, camerariis, & receptoribus.

Mirror ca. 2. Sect. 17. Britton fol. 163. b. Fleta lib. 2. ca. 64. 18. E. 2. Auowrie 220. 17. E. 3. 59. Merlbr. ca. 23. W. 2. ca. 11.

¶ *Mes tiel gardien sur son account auera allowance de touts ses reasonable costs & expences en touts choses.* And this is due to all accountants by the Common Law, and so it is declared by the said Statute of Merlebridge, Saluis ipsis custodibus rationabilibus missis suis.

The statute of Merlbr. intended by Littl. is ca. 17.

¶ *Allowance.* What other allowances shall the Gardian haue? If the Gardian receiue the rents and profits of the Lands, and be robbed of the same, whether shall he be discharged thereof vpon his Account? and it seemeth, that if he be robbed without his default or negligence he shall be discharged thereof. As if a Bailife of a Mynor or a Receiuer, or a Factor of a Merchant or the like accountant be robbed, hee shall be discharged thereof vpon his Account, and seeing the Gardian shall be charged as Bailife after the heires age of 14. and be discharged vpon his account, if he be robbed, Pari ratione, if he be robbed before the age of 14. But otherwise it is of a Carier, for he hath his hire, and thereby implicitely vndertaketh the safe deliuery of the goods deliuered to him, and therefore he shall answer the value of them if hee be robbed of them. Note the diuersity, and so it was resolued * in the Kings Bench.

41. E. 3. 3. 22. Ass. 41. 22. E. 3. Account 111. 20. Ass. 28. 3. H. 7. 4. b. 6. H. 7. 12. 10 H. 7. 25. 10 H. 6. 21. 2. E. 4. 15. Doct. & Stud. c. 38. f. 130.

*Hill. 38. Eliz. inter Woodliefe & Curtis.

So it is if goods be deliuered to a man to be safely kept, and after those goods are stolen from him, this shall not excuse him, because by the acceptance hee vndertooke to keepe them safely, and therefore he must keepe them at his perill.

So it is if goods be deliuered to one to be kept, for, to be keepe, and to be safely kept, is all one in Law, but if the goods be deliuered to him to be kept, as he would keepe his owne, there if they be stolen from him without his default or negligence, he shall be discharged. So if goods be deliuered to one as a gage or pledge, and they be stolen, he shall be discharged, because hee hath a property in them, and therefore he ought to keepe them no otherwise than his owne; but if he that gaged them, tendred the money before the stealing, and the other refused to deliuer them, then for this default in him he shall be charged.

29. Ass. p. 28.

If A. leaue a chest locked with B. to be kept, and taketh away the key with him, and acquainteth

8. E. 2. tit. Detinue 59.

quainteth not B. what is in the Cheſt, and the Cheſt together with the goods of B. are ſtolen away, B. ſhall not be charged therewith, becauſe A. did not truſt B. with them as this caſe is. And that which hath beene ſaid before of ſtealing is to be vnderſtood alſo of other like accidents, as ſhipwracke by ſea, fire by lightning, and other like inevitable accidents. And all theſe caſes were reſolued, and adiudged in the Kings bench.* And by theſe diuerſities are all the bookes concerning this point reconciled.

* Paſch. 43. Eliz. inter Southcote & Banner in detinue.

Note, Reader it is neceſſary for any that receiueth goods to be kept, to receiue them in this ſpeciall manner, viz. to be kept as his owne, or to keepe them at the perill of the owner. But now is Littleton to be further heard.

¶ *Et ſi tiel gardein maria le heire deins 14. ans, &c.* For if he marry the heire after 14. he is out of his cuſtody, and no account ſhall be made therefore.

¶ *Il accountera a luy.* He ſhall account for the marriage of the heire, viz. for ſo much as any man bona fide had offered for the marriage, or would giue in marriage vnto him.

¶ *Ou a ſes Executors.* Note that an infant of the age of 14. may make his Will (as ſome hereupon haue collected) but the meaning of Littleton is, that if after his marriage he accompliſh his age of 18. yeares at what time he may make his Teſtament, and conſtitute executors for his goods and chattels, and the words are ſo to be vnderſtood, as may ſtand with Law and reaſon. Note, Executors could not haue an action of Account at the Common law, in reſpect of the priuity of the account, but the ſtatute of W. 2. cap. 23 hath giuen the action of account to Executors, the ſtatute of 25. E. 3. ca. 5. to Executors of Executors, and the ſtatute of 31. E. 3. ca. 11. to Adminiſtrators.

9. E. 3. 61.
19. E. 3. account 56.
38. E. 3. 7.
31. E. 3. tit. Account 57.
3. E. 3. 10.
44. E. 3. Account 40.
2. R. 2. Ibid. 45.
6. R. 2. Account 47.

¶ *Que il voile luy marier ſans prender le value.* So as the Gardian ſhall not account only for that which hee ſhall receiue in this caſe, but for that alſo which hee might receiue.

¶ *Si non que il luy marier a tiel mariage que eſt tant en value, &c.* This needeth no explanation.

Hill. 3. E. 2. Coram Rege, Rot. 34 Agnes Frowicks caſe. F. N. B. 139. I. & 140. 26. E. 3. 65. 1. E. 3. 19. 20.

If the heire in Socage be rauiſhed out of the cuſtody of the Gardian, and the rauiſher marrieth the heire, the Gardian ſhall haue a Writ of rauiſhment of Ward, and recouer the value of the marriage, &c. and ſhall account to the heire for the ſame.

And the Gardian in Socage is bounden by Law, that the heire be well brought vp, and that his euidences be ſafely kept.

Trin. 1. H. 5. Coram Rege Rot. 1. Midd.

The Grandmother of the ſonne and heire of Iohn Berneuill who held the Manor of Todington in the County of Midd. in Socage, recouered the heire in a Rauiſhment of Ward againſt Simon Cheuin which had married the ſtepmother of the heire, and by the rule of the Court the plaintife Pro nutritura hæredis, & pro cuſtodia euidentiarum, inuenit plegios.

Sect. 124.

¶ *ET ſi aſcun auter home que neſt pas procheine amy, &c.* If a ſtranger entreth into the Lands of the Infant within age of 14. and taketh the profits of the ſame, the Infant may charge him as Gardian in Socage. And this doth well agree with the writ of Account againſt a Gardian in Socage, for the words bee, Idem R. præfatum R. rationabilem compotum ſuum de exitibus

19. E. 2. Auowry, 221.
39. E. 3. 16.
41. E. 3. Account 35.
49. E. 3. 10. 8. E. 3. 377.
28. Aſſ. p. 11. Pl. Com. 542.
6. E. 3. 38. F. N. B. 118.

¶ ET ſi aſcun auter home q̃ neſt prochein amy, occupie les terres ou tenemẽts del heire come gardeine en Socage, il ſerra compell' de render accompt al heire, auxi bien ſi cõe il fuiſſoyt prochein amy: car il neſt pas plee pur luy en briefe daccompt a dire, que il neſt procheine amie, &c. mes il reſpondra a quel

AND if any other man, who is not the next friend, occupies the Lands or Tenements of the heire as Gardian in Socage, he ſhall be compelled to yeeld an account to the heire as well as if he had beene next friend, for it is no plea for him in the Writ of Account to ſay that he is not the next friend, &c. but hee ſhall anſwer il

il ad occupie les terres ou tenements come gardeine en ſocage ou nemy. Sed quære, ſi apres ceo que le heire ad accompliſh lage de 14. ans, & Gardeine en ſocage continualment occupia la terre tanque heire vient a plein age, ſ. 21. ans, ſi le heire a ſon pleine age auera action Daccompt enuers le gardein de temps que il occupia apres les dits 14. ans, come enuers Gardeine en Socage, ou enuers luy come ſon baylife.

whether hee hath occupied the Lands or Tenements as Gardian in Socage or no. But *quære*, if after the heire hath accompliſhed the age of 14. yeeres, and the Gardian in Socage continually occupieth the Land vntill the heire comes to full age, s. of 21. yeeres, if the heire at his full age ſhall haue an action of Account againſt the gardian, from the time that hee occupied after the ſaid 14. yeers, as gardian in ſocage, or againſt him as his Bailiffe.

Bailiffe at any time when the heire will, either before his age of 21. yeeres or after.

provenientibus de terris & tenementis ſuis in N. quæ tenentur in ſocagio & quorum cuſtodiam idē B. habuit dum præd: A. infra ætatem fuit vt dicitur. And true it is that in iudgement of Law hee had the cuſtody of the lands: and hee is called Tutor alienus, and the right Gardian in Socage Tutor proprius, and it is no plea for him to deny that he is procheine amy, but hee muſt anſwer to the taking of the profits as Littleton here ſaith.

13.E.3. Account. 77. 22.E.3.11. 41.E.3. Account.25. 18.H.7.7. 4.H.7.6.b. 7.H.7.9.2.

¶ *Sed quære*, &c. This Quære came not out of Littletons quiver, for it is euident that after the age of 14. yeeres hee ſhall bee charged as

6.E.3.38. 32.E.3. Account 60. 7.E.4. F.N.B.118.b.

Sect. 125.

¶ Item ſi gardein en chiualry face ſes executors & deuy, le heire eſteant deins age, &c. les executors aueront le garde durant le nonage, &c. Mes ſi Gardein en Socage face ſes executors, & deuy, le heire eſteant deins lage d' 14. ans, ſes Executors naueront pas le garde, mes vn auter procheine amy, a que le heritage ne poyt my diſcend, auera la garde, &c. Et la cauſe de diuerſity eſt, pur ceo que Gardein en

ALſo if Gardian in Chiualrie makes his executors and die, the heire being within age, &c. the Executours ſhall haue the Wardſhip during the nonage, &c. but if the Gardian in Socage make his Executours & die, the heire being within the age of 14. yeeres, his Executors ſhall not haue the wardſhip, but another the next friend, to whom the Inheritance cannot deſcend, ſhall haue the Wardſhip, &c. And the reaſon of this diuerſity is be-

¶ *Son proper vſe.* A Tenant holdeth land of a Biſhop by Knights ſeruice, which Deigniory the Biſhop hath in the right of his Biſhoprick, the Tenant dieth his heire within age, the Biſhop either before or after ſeiſure dieth, neither the King nor the ſucceſſor of the Biſhop ſhall haue the Wardſhip, but his executors. For albeit the Biſhop hath the Signory in auter droit, yet the Wardſhip being but a Chattell he hath in his owne right, and a Chattell cannot goe in the ſucceſſion of a ſole Corporation, vnleſſe it bee in the caſe of the King.

7.R.2.bre.634. 40.E.3.14. 2.H.4.19. 10.Eliz. Dier.277.

7.H.4.41. 44.E.3.42.

And yet if a Biſhop haue an aduowſon, and the Church become void, and the Biſhop dye, neither the Succeſſor nor the Executors ſhall preſent, but the King, becauſe it is but a Choſe in Action. And ſo it is in Caſe where the King hath Wardſhip, but ther

24.E.3.26. 44.E.3. F.N.B.33. See more of this in the chapter of Warranty. Sect. 740.

that is a prerogatiue that belongeth to the King to prouide for the Church being void, for where the tenure by Knights seruice is of a common person, the Executors of the Tenant shall present where the auoidance fell in the life of the Tenant.

31.E.3. account, 57.
19.E.3.ibid.156.
48.E.3.2.
2.H.4.13.F.N.B.117.
19.H.6.5. 4.E.4.25.
43.E.3.21. Lib.11. fo.89.

¶ *Le heire est sauns remedie, &c.* For albeit in an action of account against a Gardian in Socage, &c. the Defendant cannot wage his Law, yet in respect of the priuity of the matters of account, and the discharge resting in the knowledge of the parties thereunto, an action of account neither lieth against the Executors of the accountant, nor at the Common Law for the Executors of him to whom the account is to be made as is aforesaid, but that is holpen by

chiualrie ad le garde a son proper vse, & Gardein en Socage nad le garde a son vse, mes al vse del heire. Et en cas lou le Gardein en Socage deuy deuant ascum accompt fait per luy al heire, de ceo le heire est sans remedie, pur ceo que nul briefe daccompt gist enuers les Executors sinon pur le Roy solement.

cause the Gardian in Chiualrie hath the wardship to his owne vse, and the gardian in Socage hath not the wardship to his owne vse, but to the vse of the heire. And in this case where the Gardian in Socage dieth before any account made by him to the heire, of this the heire is without remedy, for that no writ of account lieth against the Executors, but for the King only.

#13 E.c.ca.23

statute, (*) It hath beene attempted in Parliament to giue an action of account against the Executors of a Gardian in Socage, but neuer could be effected.

* Rot. parl. 50.E.3. nu.123.

¶ *Si non pur le roy solement.* (a) The reason of this is because the Kings treasure is the sinewes of warre, and the honour and safety of the King in time of peace, firmamentum belli, & ornamentum pacis, and therefore the death of the party shall not barre the King of his treasure due vnto him vpon the account, because it is intended that the King was busied about the publike for the good of the Common-wealth, and had not leisure to call his accountant to make his account, and nullum tempus occurrit Regi. Littleton speaketh of the Kings Prerogatiue but twice in all his bookes, viz. here, and Sect. 178. and in both places, as part of the Lawes of England. Prærogatiua is (b) deriued of præ, i. ante, and rogare, that is, to aske or demand before-hand, whereof commeth prærogatiua, and is denominated of the most excellent part, because though an Act hath passed both the Houses of the Lords and Commons in Parliament, yet before it be a Law, the Royall assent must be asked or demanded and obtained, and this is the proper sense of the word. But legally (*) it extends to all powers, preheminences, and priuileges, which the Law giueth to the Crowne, whereof Littleton here speaketh of one. Bracton lib. 1. in one place calleth it libertatem, in another Priuilegium Regis. (c) Britton (d) (following W. 1.) Droit le Roy. (c) Registrum Regium, and ius Regium Coronæ, &c.

(a) Pl.Com.321. Keyleway 131. Lib.11. fol.89.

Vid.Sect.178.
Stanf.prær.32.
(b) Fortescue.fol.45.
Rot.Parl.1. H.4.nu.188.
Pl. Com.236.
Stanf.pl.cor. 162.b.
Stanf.prær. 1.a.b. & 10.b.
(*) Stanf.prær.5.10.

(c) Westm.1.cap.50.
(d) Britton fol. 27.
(e) Regist.fol.61.&c.

Sect. 126.

43.E.3.barre 294.
9.E.4.36.
Bract.lib.2.fol.35.
Glanuil.lib.9. cap.4.

¶ *Certeine rent.* A Tenant holdeth of his Lord certaine lands in socage to pay yeerely a paire of gilt spurs or fiue shillings in mounte at the feast of Easter. In this case the rent is vncertaine, and the Tenant may pay which of them he will at the said feast, and likewise the tenant may pay which of them he will for reliefe, but if hee pay it not when he ought, then may the

v.91.a,b.

¶ Item le seignior de que la terre est tenus en Socage apres le mort son tenant, auera reliefe en tiel forme. Si le tenant tient per fealtie & certain rent, a paier annualment, &c. si les termes de paiment

ALso the Lord of whom the Land is holden in Socage, after the decease of his Tenant shall haue reliefe in this manner; If the Tenant holdeth by fealty, and certaine Rent to pay yeerely, &c. if the tearmes of

son

ſont a payer per deux termes del an, ou per quater termes ỏl an, le Seignioꝛ auera del heire ſon Tenant tant come le rent amount que il paya p an. Sicome le tenant tient de ſon ſeignioꝛ per fealtie & x. s. de rent, payable a certaine termes del an, donques lheire paiet al Seignioꝛ x. s. pur reliefe, ouſter les x. s. que il paiera pur le rent.

payment bee to pay at two termes of the yeare, or at 4. termes in the yeare, the Lord ſhall haue of the heire his Tenant, as much as the rent amounts vnto which hee payeth yearly: as if the tenant holds of his Lord by fealtie, and ten ſhillings rent payable at certaine termes of the yeare, then the heire ſhall pay to the Lord ten ſhillings for relief, beſide the ten ſhillings which he payeth for the rent.

Lord diſtraine for which of them he will. But if the Tenure be to attend on his Lord at the Feaſt of Chriſtmaſſe, or to pay ten ſhillings, there the reliefe muſt bee ten ſhillings, becauſe the other cannot be doubled, & ſic de ſimilibus.

℄ *A paier annuelment.* If the tenant holdeth of his Lord by fealtie, and to pay euery two or three yeare ten ſhillings, albeit this bee no annuall rent, yet ſhall hee pay ten ſhillings for reliefe, & ſic de ſimilibus.

But it is to be noted, that beſide reliefe whereof Littleton here ſpeaketh, there belongeth to a tenure in ſocage of common right, aid, for the making of his eldeſt ſonne a Knight at the age of fifteene yeares, & to marrie his daughter at the age of 7. yeares.

Vid. ſect. 103. F.N.B. 83. Weſt. 1. cap. 35. 25 E. 3. ſtat. 5. cap. 11.

En meſme le manner eſt, ſi home ſoit ſeiſie de certaine terre que eſt tenus en Socage, & fait feoffment en fée a ſon vſe & mourſt ſeiſie del vſe (ſon heire del age de 14. ans, ou pluis) & nul volunt per luy declare, le Seignioꝛ auera reliefe del heire, ſicome auant eſt dit. Et ceſt per le ſtatute de Ann. 19. Hen. 7. cap. 15.

In the ſame manner it is, if a man bee ſeiſed of certaine land which is holden in Socage, and maketh a feoffment in fee to his owne vſe, and dieth ſeiſed of the vſe (his heire of the age of 14. yeares or more) and no will by him declared, the Lord ſhall haue reliefe of the heire as afore is ſaid. And this by the Statute of 19. H. 7. cap. 15.

ms v. cap^m b.

This is an addition to Littleton, wherefore I omit it the rather for that the Statute of 19. H. 7. is for the cauſe abone mentioned become of none effect.

Sect. 127.

℄ ET en tiel cas apres la mort le Tenant, tiel reliefe eſt due al Seignioꝛ maintenant, de quel age que le heire ſoit, pur ceo que tiel Seignioꝛ ne poit auer le garde de corps ne de terre

AND in this Caſe, after the death of the tenant, ſuch reliefe is due to the Lord preſently, of what age ſoeuer the heire be, becauſe ſuch Lord cannot haue the wardſhip of the body, nor of the land of the heire.

℄ *Maintenant*, and as Littleton ſaith, hee ought not to attend the payment of his reliefe according to the dates of payment of his rent, but hee ought to haue his reliefe preſently, & for the ſame he may incontinently diſtraine after the death of the Tenant.

16. H. 7. 4. 18. E. 3. 26. p. 18. Bracton lib. 2. fol. 85. dabit hæres vna vice reddituum ſuum vnius anni duplicatum. Britton fol. 178. acc. Fleta lib. 1. cap. 8.

And therefore in the caſe aforeſaid, where the Tenant holdeth by the rent of fiue ſhillings, or a paire of gilt Spurres,

Spurres, if the heire be not presently (that is, as presently and as conueniently as he may, all due circumstances considered) after the death of his Ancestor ready vpon the land to pay relieke, the Lord may distrain for which of them he will, and if the tenant tendred either of them according to the Law, and none for the Lord was ready there to receiue it, yet the Lord may distraine for that which was tendred at his pleasure.

le heire. Et le Seignior en tiel case ne doit attendre a le payment de son reliefe, solonques les termes & iours de payment de rent, mes il doit auer son reliefe maintenant, & pur ceo il poit incontinent distraine apres le mort son tenant, pur reliefe.

And the Lord in such case ought not to attend for the payment of his reliefe, according to the termes and dayes of payment of the rent, but hee is to haue his reliefe presently, and therefore hee may forthwith distreine after the death of his Tenant for reliefe.

45.E.3.19.35.H.6.52. 20.Eliz. Dyer 361. Stanf.prær.13.b. F.N.B.256.259.

¶ *De quel age que le heire soit.* And yet it appeareth in our Bookes that in this case, the King in case of a Tenure in Socage in chiefe, shall not haue Primer seisin vnlesse the heire be of the age of 14. yeares at the death of his Ancestor, for if he be vnder that age, he is in the gard and custody of his prochein amy.

But otherwise it is in case of a common person, as here it appeareth. And where in some impressions these words be added (issint que il passa lage de 14. ans) those words so added are against the Law, and no part of Littletons worke.

v. 77. a².

Sect. 128.

¶ *VN lib. de pepper ou cumyn.* Here it is to be obserued that the Lord may reserue pepper or any other things that bee exotica, forreigne, of the growth of outlandish countreyes, or beyond sea, as well as of the growth of England, whereby nauigation (the life of euerie Iland) is imployed. And where Littleton here putteth his case in the disiunctiue, if the Tenant doth hold by fealtie and one pound of Pepper or a pound of Cummin, he shall pay for reliefe a pound of Pepper, or a pound of Cummin ouer and besides the rent. But if the Tenant holdeth of his Lord by doing of certaine worke dayes in harnest, or to attend at Christmasse, or such like, he shall not double the same, for of corporall seruice or labour or worke of the Tenant, no reliefe is due, but where the Tenant holdeth by such yearely rents or profits, which may be paid or deliuered, whereof Littleton hath put his examples, and by them is manifestly proued that corporall seruice, worke, or labour shall not be doubled in this case.

¶ EN Melme le Maner est lou le tenant tient de son Seignior per fealtie, & vn li. de Pepper, ou Cummin, & le tenant morust, le seignior aura pur reliefe vn lib. de Cummin, ou vn lib. de Pepper, ouster le cõmon rent. En Melme le maner est lou tenant tient a payer per an certaine number de Capons, ou de Gallines, ou vn paire de gaunts, ou certaine bushels de frument, & hmodi.

IN the same manner it is, where the Tenant holdeth of his Lord by fealtie, and a pound of Pepper or Cummin, and the Tenant dyeth, the Lord shall haue for reliefe a pound of Cummin, or a pound of Pepper besides the cõmon rent. In the same manner it is where the Tenant holdeth to pay yearely a number of Capons or Hens, or a paire of gloues, or certaine bushels of corne, or such like.

93:a.

¶ *Ou certaine bushels de frument.* Here it appeareth that the reliefe of bushels of corne is to be paid presently though the Tenant die in winter before corne be ripe.

Nor

Note here are examples put of fiue natures: 1. Aromatorum exoticorum of spices or drugs of outlandish growth. 2. Granorum, of Corne of English growth. 3. Auium villaticarum, of Powltrie, as Capons, Hens, &c. 4. Artificiorum, of handicrafts as a paire of gloues generally either of outlandish or English. 5. Aut similium, or such like (that is) of like outlandish growth or of English growth, or of Powltrie, or of Artifices, Outlandish or English, and like herein also that they may be paid or deliuered to the Lord, euerie yeare, or euerie second or third yeare, &c.

Sect. 129.

CMes en aſcun caſe le ſeignior doit demurrer a deſtreiner pur ſon reliefe ieſque a certaine temps. Sicome le ten̄t tient de ſon ſeignior per vn Roſe, ou p̄ vn buſhel de Roſes, a paier al feaſt de Natiuitie de Saint Iohn Baptiſt, ſi tiel tenant deuie en yuer, donque le ſ̄r ne poit diſtr̄ p̄ ſon reliefe tāque al tēps q̄ les Roſes p̄le courſe del an poiēt aū lour creſſer, &c. & ſic de ſimilibus.

BVt in ſome caſe the Lord ought to ſtay to diſtreine for his reliefe vntill a certaine time. As if the tenant holds of his Lord by a Roſe, or by a buſhell of Roſes to pay at the feaſt of St. *Iohn* the *Baptiſt*, if ſuch Tenant dieth in winter, then the Lord cannot diſtreine for his reliefe vntill the time that Roſes by the courſe of the yeare may haue their growth, &c. and ſo of the like.

CPer le courſe del an. Lex ſpectat naturæ ordinem, The Law reſpecteth the order and courſe of Nature. Lex non cogit ad impoſſibilia, The Law compels no man to impoſſible things. The argument ab impoſſibili is forcible in Law, Impoſſibile eſt quod naturæ rei repugnat. And here it is to bee obſerued, that Littleton puts a diuerſitie betweene Corne, and Roſes, for Corne will laſt, and therefore the Tenant muſt deliuer the Corne preſently before the time of growth, (as before is ſaid,) and ſo of Saffron, and the like, but Roſes, or other flowers, that are fructus fugaces, cannot bee kept, and therefore are not to bee deliuered till the time of growing, neither is the Tenant driuen by Law artificially to preſerue Roſes, for the Law in theſe caſes reſpecteth Nature, and the courſe of the yeare, as Littleton here ſaith, Et ars naturam imitatur, & ſic de ſimilibus.

Sect. 130.

CItem ſi aſcun voile demand, pur q̄ home poit tener de ſon ſeignior p̄ fealtie tantſolement p̄ touts maners des ſeruices, entant que quant le tenant ſerra fealtie il iurera a ſon Seignior q̄ il ſerra a ſon Sr̄ touts maners des ſeruices dues, & quant il ad

ALſo if any will aske, why a man may hold of his Lord by Fealtie only for all manner of ſeruices, inſomuch as when the Tenant ſhall do his fealtie, he ſhall ſweare to his Lord, that hee will doe to his Lord all manner of ſeruices due, and when hee hath done fealtie in

CQuant le tenant ſerra fealtie, il iurera a ſon Seignior, &c. Here it appeareth, that the doing of the fealty is both a performance of his ſeruice, and of his oath alſo when it is done, for that no other ſeruice is due. And that one oath of fealtie is taken of all that hold and is not to bee changed for any noueltie or nicetie of inuention, for Iudges anciently & continually haue ſuppreſſed innouations, and would in no caſe change the ancient Common Law.

31. E. 3. tit. Gager deliuerance 5.
38. E. 3. 1. 42. Aſſ. p. 12.
4. E. 3. ca. 5.
18. E. 3. ca. 4. & 6.
4. H. 4. ca. 2, 2. H. 4. fo. 18.

CIl

¶ *Il conuient que il doit faire a son Seignior aſcun ſeruice.* For there can bee no Tenure without ſome ſeruice, becauſe the ſeruice maketh the Tenure.

See of this in the Chapter of Fee ſimple, ſect. 4.

¶ *Son eſcheat de la terre.* Eſchaeta is deriued of this word Eſchier, quod eſt accidere: For an eſcheat is a caſuall profit, quod accidit Domino ex euentu, & ex inſperato, which happeneth to the Lord by chance, and vnlooked for. And of this word Eſchaeta commeth Eſchaetor, an Eſcheator, ſo called, becauſe his office is to inquire of all caſuall profits, and them to ſeiſe into the Kings hands, that the ſame may bee anſwered to the King.

See more of this in the Chapter of Warrantie, ſect.

Lands may eſcheat to the Lord two manner of wayes: one by attainder, the other without attainder. By attainder in three ſorts: Firſt, Quia ſuſpenſus eſt per collum. Secondly, Quia abiurauit Regnum. Thirdly, Quia vtlegatus eſt: Without attainder, as if the Tenant dies without heire.

W. 2. ca. 33. Flet. li. 2. ca. 41. & li. 5. ca. 34. 33. H. 8. ca. 24.

¶ *Ou per caſe auter forfeiture.* As if the land be aliened in Mortmaine, or when Littleton wrote, if the Tenants had erected crolles vpon their houſes or tenements, in preiudice of the Lords, that the Tenants might claime the priuiledge of the hoſpitalers to defend themſelues againſt their Lords, they had forfeited their Tenancies. But ſince Littleton wrote, the Hoſpitalers are diſſolued, and conſequently that forfeiture is gone.

¶ *Ou profit.* As Reliefe, Aid pur file marrier, aid pur faire fitz chiualer, and the like.

fait fealtie en tiel caſe nul auter Seruice eſt due. A ceo il poit eſtre dit, Que lou vn Tenant tient ſa Terre de ſon Seignior, il couient que il doit fait a ſon Seignior aſcun Seruice, car ſi le Tenant ne ſes heires deuoyent faire nul manner de Seruice al Seignior ne a ſes heires, donque per long temps continue il ſerroit hors de memorie & de remembrance, le quel la terr̃ fuit tenus de le ſeignior, ou de ſes heires, ou nemy, & donques pluis toſt & pluis rediment voſſont hões dire que la terre neſt pas tenus del Seignior ou de ſes heires, q̃ autrement: Et ſur ceo le Seignior perdra ſon Eſcheat de la terre, ou per caſe auter forfeiture ou profit que il poet auer de le terre. Iſſint il eſt reaſon que le Seignior & ſes heires ont aſcun Seruice fayt a eux, pur prouer & teſtifier que la terre eſt tenus de eux.

this caſe no other Seruice is due. To this it may bee ſayd, That where a Tenant holds his land of his Lord, it behoueth that hee ought to doe ſome ſeruice to his Lord: For if the Tenant nor his heires ought to do no manner of Seruice to his Lord nor his heires, then by long continuance of time it would grow out of memorie, whether the Land were holden of the Lord, or of his Heires, or not, and then will men more often and more readily ſay, That the Land is not holden of the Lord, nor of his Heires, than otherwiſe: And hereupon the Lord ſhall loſe his Eſcheat of the Land, or perchance ſome other forfeiture or profit which hee might haue of the Land. So it is reaſon that the Lord and his heires haue ſome Seruice done vnto them, to proue and teſtifie, That the land is holden of them.

Sect.

Sect. 131.

¶ Et pur ceo que fealty est incidēt a touts manners de tenures, forspris le Tenure in Frankalmoign, (sicome serra dit en le tenur̄ de Frankalmoign) & pur ceo que le Seignior ne voilloit al commencement del Tenure auer ascun auter service forsque Fealtie, il est reason que home poet tener de son Seignior per Fealtie tantsolement, & quaunt il ad fait son Fealtie, il ad fait touts ses services.

AND for that Fealtie is incident to all manner of Tenures but to the Tenure in Frankalmoigne, (as shall bee said in the Tenure of Frankalmoigne) and for that the Lord would not at the beginning of the Tenure haue any other seruice but Fealtie, it is reason that a man may hold of his Lord by Fealtie onely, and when he hath done his Fealtie, hee hath done all his seruices.

¶ *Fealtie est incident.*

Of Incidents there bee two sorts, viz. separable, and inseparable.

Separable, as rents incident to reuersions, &c. which may be seuered, inseparable, as fealtie to a reuersion or tenure which cannot be seuered: for as all lands and tenements within England are holden of some Lord or other, and either mediately or immediately of the King, so to euerie tenure at the least, fealtie is an inseparable incident, so long as the Tenure remaines, and all other Services, except Fealtie, are seuerable. But where the Tenure is by Fealtie onely, there is no Reliefe due for the cause aboue said. 91. a. b.

Sect. 132.

¶ Item si vn home lesse a vn auter p̄ terme d̄ vie certaine terres ou tenem̄ts sauns parler de ascun rent rend̄ a le Lessor uncore il ferra fealtie a le Lessor, p̄ ceo que il tient de luy. Auxy si vn lease soit fait a vn hōe pur terme de ans, il est dit que le Lessée ferra fealtie a le Lessor, pur ceo q̄ il tient de luy. Et ceo est prouue bien p̄ les parols del briefe de Waste, quaunt le Lessor ad cause de porter briefe d̄ Waste enuers luy, le quel Briefe dira, q̄ le Lessée tient les Tenements de le Lessor pur terme de ans,

ALso if a man letteth to another lands or tenements for terme of life, without naming any rent to be reserued to the Lessor, yet hee shall do fealtie to the Lessor, because hee holdeth of him. Also if a lease bee made to a man for terme of yeares, it is said that the Lessee shall doe fealtie to the Lessor, because he holdeth of him. And this is well proued by the words of the writ of waste, whē the lessor hath cause to bring a writ of waste against him, wch writ shal say, that the Lessee holds his tenements of the Lessor for terme of yeares. So the

¶ *Si vn home lesse pur terme de vie sauns parler de rent, &c. il ferra fealtie, &c.* And the reason is, Because there is a Tenure, and Fealtie (as hath beene said) to incident to all manner of Tenures, & it is to bee noted, that the Law for the V. fol. 214. Iuy

the Suretie of the Lord, that his Tenant shall be faithfull and loyall to him, doth create such a seruice as the Tenant shall be bound thereunto by oath.

40.E.3.34.9.H.6.41. 10.H.6.13.9.E.4.1. 21.E.4.29. 5.H.5.12. 5.H.7.11.

¶ *Auxi si lease soit fait pur ans, &c. le Lessee ferra fealtie.* For there also is a Tenure betweene them. And Littletons opinion in this case is holden for good Law at this day.

Vid.sect.84.

¶ *Et ceo est proue bien per les parols del briefe, &c.* Nota, the originall writs are (as it were) the foundations and grounds of the Law, and as it appeares here by Littleton, are of great authoritie for the proofe of the Law in particular cases.

¶ *Pur ceo que il nad suer estate.* Therefore tenant at will shall not doe Fealtie (as hath beene said before) because the matter of an oath must be certaine. The rest of this Section needs no explication.

ilsint le briefe proua vn tenure enter eux. Mes celuy que est tenant a volsit solonqz le course del common ley ne ferra fealtie, p̄ ceo que il nad ascun suer estat. Mes auterment est de tenant a volunt solonqz l'custome del mannoz, p̄ ceo que il est oblige pur faire fealtie a son Sñr pur deux causes: Lun est p̄ cause del custome: & lauter est, pur ceo q̄ il prist son estate en tiel forme pur faire a son Sñr fealtie.

Writ proues a tenure betweene them. But hee which is Tenant at will according to the course of the Common Law, shall not do Fealtie, because hee hath not any sure estate: but otherwise it is of Tenant at will according to the custom of the mannor, for that he is bound to do fealtie to his Lord for two causes, the one is, by reason of the custome, and the other is for that hee taketh his estate in such forme to doe his Lord Fealtie.

57.b.

Gifts in Frankalmoign were not ordinary amongst our Norman ancestors, till about Hen. II. Selden. Fortesc. treat. of ant. Dom. c. 251.

CHAP. 6. Frankalmoigne. Sect. 133.

Bract.lib.2. cap.5. & lib.4. cap.2. Britton fo.164.165. Mirror ca.2.sect.18. Glanuil lib.7.ca.1. & lib.12.ca.3. & 25. Fleta lib.3.ca.5.

¶ *VN Abbe, Prior, ou auter home de religion ou de saint Esglise.* It is to be obserued that of Ecclesiasticall persons some bee regular, and some be secular. They be called regular, because they liue vnder certaine rules, and haue vowed three things, true obedience, perpetuall chastitie, & wilfull pouertie. And when a man is professed in any of the orders of Religion, he is said to bee home de religion, a man of religion, or religious. Of this sort bee all Abbots, Priors, and others of any of the said orders regular. Secular are persons Ecclesiasticall, but because they liue not vnder certaine rules of some of the said orders, nor are Notaries

21.H.7.39. 29.E.3.14.

40.E.3.29. 8.H.6.23. 7.E.4.12. 12.H.8.8.

¶ Tenant en Frankalmoigne, est lou vn Abbe ou Prior ou vn autr̄ hõe d̄ religiõ ou d̄ saint Eglise, tiēt de son sñr en Frankalmoigne, q̄ est adiñ en Latin in liberam eleæmosynam. Et tiel tenure comment adeprimes en auncient temps en tiel forme; Quant vn home en auncient temps fuit seisie d̄ certain terres ou tenements en son demesne come de fee,

Tenant in frankalmoigne, is where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne: that is to say in Latine *in liberam Eleæmosynam*, that is, in free almes. And such tenure began first in old time when a man in old time was seised of the lands or tenements in his demesne as of Fee, and of the same land in-

¶

& de meſmes les terres ou tenements enfeoffa vn Abbe & ſon Couent, ou vn Priour, &c. a auer & tener a eux & lour ſucceſſors a touts iours en pure & perpetual almoign, ou en Frankalm ou p tiels parols; A ten de le grantor, ou de le feoffor, & de ſes hēs en Frankalmoign: en tiels caſes les tenements ſont tenus en Frankalmoigne.

feoffed an Abbot and his Couent, or Prior and his Couent, to haue and to hold to them and their ſucceſſours in pure and perpetuall Almes, or in Frankalmoigne, or by ſuch words, to hold of the Grantor, or of the Leſſor and his heires in free almes: In ſuch caſe the Tenements were holden in Frankalmoigne.

they are for diſtinction ſake called ſecular, as Biſhops, Deanes and Chapters, Archdeacons, Prebends, Parſons, Vicars, and ſuch like. All which Littleton here includeth vnder theſe general words, de ſaint Egliſe, of holy Church, and none of theſe are in Law ſaid to be homes de religion, or religious.

Where Littleton ſaith (infeoffa vn Abbe & ſon Couent) his meaning is, that the Abbot only is infeoffed, for he is only a perſon capable, and the Couent are dead perſons in Law, and haue power of aſſent only, & that they thereunto aſſent. But ſince Littleton wrote, all Abbeys, Priories, Monaſteries, and other religious houſes of Monks, Canons, Friers, and Nuns, &c. haue been diſſolued, & their poſſeſſions giuen to the Crowne.

See the ſtatutes of 27. H. 8. not printed, but in the abridgement, 31. H. 8. cap. 13. & 32. H. 8. ca. 24. &c. Vide ſect. 530.

The Eccleſiaſticall ſtate of England, as it ſtandeth at this day (which is neceſſarie for our Student to know) is diuided into two Prouinces, or Archbiſhoprics, (viz.) of Canterbury, and of Yorke. The Archbiſhop of Canterbury is ſtiled, Metropolitanus & Primas totius Angliæ, And the Archbiſhop of Yorke, Primas Angliæ. Each Archbiſhop hath within his Prouince Suffragan Biſhops of ſeuerall Dioceſſes. The Archbiſhop of Canterbury hath vnder him within his Prouince, of ancient foundations, viz. Rocheſter his principall Chaplaine, London his Deane, Wincheſter his Chancellor, Norwich, Lincolne, Ely, Chicheſter, Saliſbury, Exeter, Bathe and Wells, Worceſter, Couentry and Lichfield, Hereford, Landaffe, St. Dauid, Bangor, & St. Aſſaphe, and foure founded by K. Henry 8. erected out of the ruines of diſſolued Monaſteries (that is to ſay) Glouceſter, Briſtow, Peterborow, and Oxford. The Archbiſhop of Yorke hath vnder him foure, (viz.) the Biſhop of the Countie Palatine of Cheſter newly erected by King H. 8. and annexed by him to the Archbiſhopricke of Yorke, the Countie Palatine of Durham, Cariile, and the Iſle of Man annexed to the Prouince of Yorke by H 8. but a greater number this Archbiſhop anciently had, which time hath taken from him. The extent of euerie Dioceſſe you may elſewhere read, the which for breuitie I here omit. All the ſaid Archbiſhoprics, and Biſhoprics of England were founded by the Kings of England, to hold by Barony, as hereafter ſhall be ſaid. * And euerie Archbiſhop and Biſhop hath his Deane and Chapter, whereof more ſhall be ſaid hereafter. The Archbiſhop of Canterbury hath the precedencie, next to him the Archbiſhop of Yorke, next to him the Biſhop of London, and next to him the Biſhop of Wincheſter, and then all other Biſhops of both Prouinces after their ancientneſſe.

Marth. Parker de vitis Archiepiſcoporum. Lyewod. Camden Britannia. Vid. Rot. Parliam. anno 36. H. 8. 1. E. 6. 5. & 6. &c. Weſtminſter alſo was newly erected a Biſhoprick by H. 8. but by Queene Mary it was reſtored to be an Abbey, and by Queene Eliz created a Deanrie Collegiate. Cheſter had beene anciently a Biſhops See, and long ſince tranſlated to Couentry. 33. H. 8. ca. 31. Camden vbi ſupra. 26 H. 8. firſt fruits and tenths. Vid. ſect 137. * Lib. 3. fo. 73. Deane and Chap. of Norwich caſe. Vide ſect. 134. 101. 31. H. 8. cap. 10.

97. a.

Euerie Dioceſſe is diuided into Archdeconries, whereof there be 60. and the Archdeacon is called oculus Epiſcopi, and euerie Archdeaconrie is parted into Deanries, and Deanries againe into Pariſhes, Townes and Hamlets. And thus much for the better vnderſtanding of our Author, and how the ſtate Eccleſiaſticall ſtandeth at this day, ſhall ſuffice.

Vide more hereof, ſect. 180 528. 648. &c.

¶ *Frankalmoigne, que eſt a dire en Latine, in liberam Eleemoſynam.* In Engliſh in free Almes. There is an officer in the Kings houſe called Eleemoſynarius, vulgarly called the Kings Almner (whoſe office & dutie is excellently deſcribed in ancient Authors,) viz. Fragmenta diligenter colligere & diligenter diſtribuere ſingulis diebus egenis: ægrotos, & leproſos, incarceratos, paupereſque viduas, & alios egenos vagoſque in patria commorantes charitatiue viſitare; item equos relictos, robas, pecuniã, & alia ad Eleemoſynã largita recipere, & fideliter diſtribuere, debet etiã regẽ ſuper Eleemoſynæ largitione crebris ſummonitionib⁹ ſtimulare, præcipue diebus ſanctorũ, & rogare ne robas ſuas, quæ magni ſunt pretii, hiſtrionibus, blanditoribus, accuſatoribus, ſeu meniſtrallis, ſed ad Eleemoſynæ ſuæ incrementũ jubeat largiri.

Fleta lib. 2. cap. 23.

All Eccleſiaſticall perſons may hold in Frankalmoign be they ſecular or regular, & no lay perſon can hold in frankalmoign. This adiective (liber) doth diſtinguiſh many things in law from others, as here libera Eleemoſyna are words appropriated to this caſe, and doth diſtinguiſh it from a tenure by diuine ſeruice, liberum tenementum from a tenure in villenage, or by Copihold, or baſe tenure, liberum feodum franke fee, from a tenure in ancient Demeane, liberum

Vide ſect. 1. Bract. lib. 4. c. 37. 38. Britton cap. 32.

Britton ca. 66.
Bract. lib. 4. F. N. B. 150.
Bract. lib. 4. fol. 288. 247. 292. Britton fol. 2. 5.
Fleta lib. 5. cap. 11.
Forte cue c. 26. 24. E. 3. 34. 43. E. 3. conspir. 11. 27. Ass. 59 Stat. f. 175.
Vide sect. 199.
Fleta lib. 1. cap. 47.

berum maritagium from other estates taile, libera firma, frank ferme, when an estate is changed from Knights Seruice to Socage, liberum Socagium, from a tenure by seruice in Chiualrie. Francus Bancus to distinguish it from other Dowers, for that it commeth freely without any act o the husbands, or assignement of the heire. Libera lex, to distinguish men, who enioy it, and whose best and freest birthright it is, from them, that by their offences haue lost it, as men attainted in an attaint, in a conspiracie vpon an Inbictment, or in a Premunire, &c. And so of libera capella, francus plegius, frankpledge, libera chasea, free chase, liber burgus, liber aper, liber taurus, and the like. But in a matter (some will say) of curiositie, this shall suffice, and yet seeing it tends to the better vnderstanding (others say) it is tolerable.

Glanuil. lib. 7. ca. 1. fo. 44. 45. acc.
Britton ca. 66. fol. 164.
Bract. lib. 2. cap. 5. & 10.
F. N. B. 211.

By the ancient Common Law of England, a man could not alien such lands as he had by descent, without the consent of his heire, yet he might giue a part to God in free Almoigne, or with his daughter in free marriage, or to his seruant in remuneratione seruitii. Our old books described Frankalmoigne thus, when lands or tenements were bestowed vpon God, (that is) giuen to such people as are consecrated to the seruice of God. In our ancient books these gifts of deuotion were called Churchesset, or Churchsæd, quasi semen Ecclesiæ, but in a more particular sense it is described thus. Certam mensuram bladi tritici significat, quam quilibet olim sanctæ Ecclesiæ die sancti Martini tempore tam Britonum quam Anglorum contribuerunt: plures tamen Magnates post Romanorum aduentum illam contributionem secundum veterem legem Moisi nomine primitiarum dabant, prout in breui Regis Knuti ad summum Pontificem transmiss. continetur, in quo illam contributionem Churchsed appellant quasi semen Ecclesiæ.

Fleta lib. 1. cap. 42.

¶ *Et tiel tenure.* For albeit neither fealtie, nor any other temporall seruice is due, yet it is a tenure. *v. inf. sect.* 135

7. E. 4. 12. 33. H. 6. 6. 7. 39. H. 6. 29.
(a) Mortmaine.
Britton fol. 32. & 90.
Bracton lib. 2. cap. 5.
Fleta lib. 3. cap. 5.
11. H. 7. 12.

¶ (a) *En ancient temps.* That is to say before the Statutes of Mortmaine, viz. Magna Charta cap 36. & 7. E. 1. de religiosis, &c. and before the Statute of Quia emptores terrarum; as shall be hereafter in his proper place said in this Chapter.

39. H. 6. 30. b.

¶ *Enfeoffe vn Abbe & son Couent, &c.* Albeit the Couent be dead persons in Law, and the Abbot only capable (as before is said) yet if the feoffment be made to an Abbot and Couent, the feoffment is good, and the state vesteth only in the Abbot. And note a man may infeoffe an Abbot, a Bishop, a Parson, &c. or any other sole body politique by deed, or without deed. In free Almes, and so may a gift in frankmarriage be made without deed also: but if lands be giuen to a Deane and Chapter, or any other Corporation aggregate of many, there the gift must be by deed.

Vid. Litl. in th Chapter of Fee simple, sect. 1, 2.
39. H. 6. 30.

¶ *A auer & tener a eux & a lour successors.* For in case of an Abbot or Prior and Couent regularly a Fee simple doth not passe without these words (Successors) for the diuersitie standeth thus between a Corporation aggregate of many capable persons, and a sole Corporation. If lands be giuen to a Deane and Chapter, they haue a Fee simple without these words (Successors) for that the body neuer dies, but if lands be giuen to a Bishop, Parson, or any other sole Corporation, who after their deceases haue a succession, there without these words (Successors) nothing passeth vnto them but for life. But of Corporations aggregate of many, there is a diuersitie when the head and body both are capable, as in the case of Deane & Chapter and when one (as hath been said) is only capable, as in case of Abbot or Prior and Couent, but yet out of the generall rules the case of Frankalmoigne is excepted as hereafter shall be said. Also Lands must be giuen to a Corporation aggregate of many by Deed, but to a sole Corporation it may be granted without Deed.

Bracton lib. 2 ca 1. Potest donatio fieri in liberam Eleemosinam Ecclesiis Cathedralibus, Conuentualibus, Parochialibus & viris religiosis.

35. H. 6. 56. 7. E. 4. 11. Vid. Bract. lib. 2. ca. 10.

¶ *En pure & perpetuall almoigne.* Here it appeareth that a Tenure in Frankalmoigne may be created without this word (libera) for pura impleth as much.

35. H. 6. 56. 7. E. 4. 11. Bract. vbi supr. 44. E. 3. 24.

¶ *Ou en Frankalmoigne.* But one of these words either pura, or libera, must be vsed, or else it is no Tenure in Frankalmoigne.

20. H. 6. fo. 36.

¶ *Ou per ceux parolx a tener de le grantor ou feoffor & ses heires en Frankalmoigne.* Here it appeareth that by these words a fee simple passeth without these words (Successors) albeit it be in case of a sole Corporation. For as in case of a gift in Frankmariage, an Estate taile passeth to the Donees without words of heires of their two bodies, as hath beene said in the Chapter of Fee taile, so in case of a gift in Frankalmoigne (which may be resembled to a diuine marriage) a Fee simple passeth, as hath beene said (though it be in case of a sole Corporation) without this word (Successors.) And besides, grants in Frankalmoigne are ancient Grants as hath beene said, and therefore shall bee allowed, as the Law was taken, when such Grants were made.

38. E. 3. 4. 2. 14. H. 6. 12. 10. H. 7. 13. 16. H. 7. 9. 18. E. 3. Consulam 39. 3. H. 6. 22. 17. E. 3. 51. 6. E. 4. 4. &c. Tr. 5. E. 3. Rot. 4. in Scaccario. The Prior of Dunstable's case.

sect. 17.

Sect. 134.

¶ EN meſme le manner eſt, lou terres ou tenements fueront grant en ancient temps a vn Deane & Chapter, & a lour ſucceſſors, ou a vn Parſon dun Eſglis, & a ſes ſucceſſors, ou a aſcun auter hõe de ſaint Eſglis, & a ſes ſucceſſors en frankalmoigne ſi il auoit capacity dapprendr tiels grants ou feoffments, &c.

IN the ſame manner it is where Lands or tenements were granted in anciẽt time to a Deane and Chapter and to their Succeſſors, or to a Parſon of a Church and his ſucceſſors, or to any other man of holy Church, and to his ſucceſſours in Frankalmoigne, if hee had capacitie to take ſuch graunts or feoffments, &c.

¶ *EN meſme le manner, &c.* Here Littleton hauing put an example of bodies incorporate aggregate of many whereof the head is only capable, now putteth examples both of bodies incorporate, aggregate of many (all being capable) and of ſole Corporations of ſecular perſons.

¶ *Deane* Decanus is deriued of the Greeke word δεκὰς that ſignifieth Ten, for that hee is an Eccleſiaſticall ſecular Gouernour, and was anciently ouer ten Prebends, or Canons at the leaſt in a Cathedrall Church, and is head of his Chapter.

¶ *Chapter.* Capitulum eſt Clericorum congregatio ſub vno Decano in Eccleſia Cathedrali. And Chapters be two fold, viz. the Ancient, and the Later. And the later be alſo of two ſorts, firſt, thoſe which were tranſlated or founded by King Henry the Eight, in place of Abbots and couents, or Priors and Couents, which were Chapters whiles they ſtood, and theſe are new Chapters to old Biſhoprickes. Secondly, where the Biſhoprick was newly founded by Henry the Eight (as Cheſter, Briſtow, &c.) there the Chapters are alſo new. There is a great diuerſity betweene the commings in of the ancient Deane, and of the new. For the ancient come in, in much like ſort as Biſhops doe: for they are choſen by the Chapter, by a Congè de eſlier, as Biſhops be, and the King giuing his Royall aſſent, they are confirmed by the Biſhop. But they which are either newly tranſlated, or founded, are Donatiue, and by the Kings Letters Patents are inſtalled, which are matters neceſſary to be knowne.

¶ *Sil auoit capacitie a prender.* For Eccleſiaſticall perſons haue not capacitie to take in ſucceſſion, but ſe they be bodies Politique, as Biſhops, Archdeacons, Deanes, Parſons, Vicars, &c. or lawfull incorporate by the Kings Letters Patents, or preſcription, as Deanes and Chapters, Colleges, &c. But a College of religious perſons, Chauntry Prieſts, and ſuch like, that are not lawfully incorporated, but only conſiſt in vulgar reputation, haue no capacity to take in ſucceſſion, therefore Littleton added materially (ſil auoit capacitie à prender.)

Sect. 135.

¶ ET tiels que teignont en franke-a'moigne ſont oblige de droit deuant Dieu de fair oriſons, prairs, meſſ. & autres diuine ſeruices pur les almes de lour grantor ou feoff. & pur les almes de lour heires

AND they which hold in Frankalmoigne, are bound of right before God, to make Oriſons, Prayers, Maſſes, and other diuine ſeruices for the ſoules of their grantor or feoffor, and for the ſoules of their heires

¶ In this Section there appeareth a diuiſion of tenures, that is to ſay, ſome be ſpirituall, and ſome be temporall. And of ſpirituall ſome be incertaine, as tenures in Frankalmoigne, and ſome be certaine, as Tenures by diuine Seruice. Againe, diuine Seruice certaine is two fold, either ſpirituall, as prayers to God, or temporall, as diſtribution of almes to poore people.

¶ Ob.

¶ *Oblige de droit.* That is they are compellable by the Ecclesiasticall Law to doe it, and therefore it is said that they are bound of right, (for want of remedy, & want of right is all one) and the Common Law (as here it appeareth) taketh knowledge of the Ecclesiasticall Law in that behalfe.

¶ *De faire Orisons, Prayers, Messes, & auters Diuine Seruices.*

Since Littleton wrote, the Liturgie or Booke of Common Prayer, and of celebrating Diuine Seruice is altered, this alteration notwithstanding, yet the Tenure in Frankalmoigne remaineth, and such Prayers & Diuine Seruice shall be said and celebrated, as now is authorized, yea, though the tenure be in particular, as Littleton (a) hereafter saith, viz. A Chaunter vn messe, &c. ou a Chaunter vn placebo & dirige, yet if the Tenant saith such Prayers now authorized, it sufficeth. And as Littleton (b) hath said before in the case of Socage, the changing of one kinde of temporall seruices into other temporall seruices, altereth neither the name nor the effect of the Tenure: so the changing of spirituall seruices into other spirituall seruices, altereth neither the name nor effect of the Tenure. And albeit the Tenure in Frankalmoigne is now reduced to a certaintie contained in the Booke of Common Prayer, yet seeing the originall Tenure was in Frankalmoigne, and the change is by generall consent by authoritie of Parliament, (c) whereunto euery man is parte, the Tenure remaines as it was before.

(a) Vide sect. 137.

(b) Vide sect. 119.

(c) 2. E. 6. c. 1. 5. & 6. E. 6. cap. 1. 1. Eliz. ca. 2.

¶ *Ne ferront ascun fealtie.* Herein Tenant in Frankalmoigne differeth from a Tenant in Frankmarriage, for Tenant in Frankmarriage shall doe fealtie, as hath been said in the Chapter of Fealtie, but Tenant in Frankalmoigne shall not doe any, or any other thing, but deuota animarum suffragia.

¶ *Tiel diuine seruice est melieur pur eux.* And it is also said in our Bookes (d) Que Frankalmoigne est le pluis haute seruice, and this was confessed by the Heathen Poet.

(d) 33. H. 6. 6. 13. E. 1. tit. count de voucher. 118.

Fuit hæc sapientia quondam
Publica priuatis secernere, sacra profanis.

And certainely it is, that Nunquam res humanæ prosperè succedunt vbi negliguntur diuinæ.

Sect. 136.

¶ *E Seignieur ne poet eux distreiner pur cest non feasant, &c.*

¶ *Distreine.* The

¶ ET si tiels que teignont lour tenements en frankalmoigne ne voilont ou failont de faire tiel

AND if they which hold their Tenemēts in Frankalmoign will not or faile to doe such diuine seruice (as

Di-

diuine ſeruice (cõe eſt dit) le ſñr ne poit cux diſtrainer p̃ cel non ſeſant, &c. pur ceo que neſt mis en certaine quelx ſeruices ils doient faĩ, mes l'ſñr de ceo poit complaine a lour Ordinary ou Viſitour, luy prayant que il voiloit mitter puniſhment & correction õ ceo, & auxy de prouider q̃ tiel negligence ne ſoit pluis auãt fait, &c. Et lordinary ou viſit de droit ceo doit faire, &c.

is ſaid) the Lord may not diſtraine them for not doing this. &c. becauſe it is not put in certaintie what ſeruices they ought to doe: but the Lord may cõplaine of this to their Ordinary or Viſitour, praying him that hee will lay ſome puniſhment and correction for this, and alſo prouide that ſuch negligẽce be no more done, &c. And the Ordinarie or Viſitor of right ought to doe this, &c.

word Diſtreſſe, is a French word, in Latine it is called diſtrictio, ſiue anguſtia; becauſe the cattell diſtrained are put into a ſtrait, which wee call a pownd.

¶ *Pur ceo que neſt miſe en certaine queux ſeruices ils doient faire.* It is a Maxim in Law, that no diſtreſſe can be taken for any ſeruices that are not put into certaintie (e) nor can bee reduced to any certaintie, for, Id certum eſt, quod certum reddi poteſt; for (f) oportet quod certa res deducatur in judicium: and vpon the Auowrie, Dammages cannot be recouered for that which neither hath certaintie, nor can be reduced to any certaintie; and yet in ſome caſes there may bee a certaintie in vncertaintie, as a man may hold of his Lord to ſheere all the ſheepe depaſturing within the Lords Manor, and this is certaine enough, albeit the Lord hath ſometime a greater number, and ſometime a leſſer number there, and yet this incertaintie being referred to the Manor which is certaine, the Lord may diſtraine for this vncertaintie. Et ſic de ſimilibus.

(e) 35.H.6.37. Br.tit.offic.4. 8.E.3.3.66. 20.E.3. Auowrie 131.
(f) Bracton fol.230. & 328.

7.E.3.38.

¶ *Poet complayner.* That is, to complaine in courſe of Juſtice, according to the Eccleſiaſticall Law.

¶ *A lour Ordinarie.* Ordinarius, and ſo he is called (g) in the Eccleſiaſticall Law, Quia habet ordinariam jurisdictionem in jure proprio, & non per deputationem: the name wee haue anciently taken from the Canoniſts, and doe apply it onely to a Biſhop or any other that hath ordinarie iuriſdiction in cauſes Eccleſiaſticall: In this caſe of Littleton it is to be obſerued, that the Law doth appoint euerie thing to be done by thoſe, vnto whoſe office it properly appertaineth, and forasmuch as it belongeth to the office of the Ordinarie in this caſe to ſee Diuine Seruice ſaid, and to compell them to doe it by Eccleſiaſticall cenſures, therefore complaint is to be made vnto him. Here, and in the next Section it appeareth, that for deciding of controuerſies, and for diſtribution of Juſtice within this Realme, there bee two diſtinct iuriſdictions, the one Eccleſiaſticall, limited to certaine ſpirituall and particular caſes (of the one whereof our Author here ſpeaketh) and the Court wherein theſe cauſes are handled, is called Forum Eccleſiaſticum. The other iuriſdiction is ſecular and generall, for that it is guided by the common and generall Law of the Realme, Quæ pertinet ad coronam & dignitatem regis, & ad regnum in cauſis & placitis rerum temporalium in foro ſeculari. So as in this caſe put by our Author, the Lord hath remedy for his Diuine Seruice (albeit they iſſue out of temporall lands) in Foro Eccleſiaſtico, by the Eccleſiaſticall Law, otherwiſe the Lord ſhould be without remedy. Yet the Common Law, to the intent that Eccleſiaſticall perſons might the better diſcharge their dutie in celebration of Diuine Seruice, and not to be intangled with temporall buſineſſe, hath prouided, that if any of them be choſen to any temporall office, he may haue his Writ De clerico infra ſacros ordines conſtituto non eligendo in officium, &c. and thereof be diſcharged.

(g) Mirror, ca.5.ſect. Bracton lib.5.to.405.&c. Fleta lib.2.ca.50. & 55. & lib.6.ca.38. Britton fol.69.70. W.2.ca.19. 17.E.2.bre.822. Regiſt. 141. Lindwood, tit.de Conſtit.cap.exter. Bract.lib.5.ca.2. fo.400.& 401. and the other Authors aboueſaid.

Regiſt.orig.187.b.

¶ *Ou Viſitor.* That is, where the King or any of his Progenitors is Founder of the houſe, there the Ordinarie regularly ſhall not viſit them, but the Chancellour of England is appointed by the Law to be Viſitor of them, or where a ſpeciall Viſitor is appointed vpon the foundation, the complaint muſt be made to that Viſitor.

27.E.3.84.85. Regiſt.40. F.N.B.42. 10.Eliz.Dyer 271. 16.E.3.bre.660. 21.E.3.60. 6.H.7.13. 8.Aſſ.29. Brooke tit. Premunire 21.

¶ *De droit doit ceo faire.* De droit, Of right, (that is to ſay) he ought to doe it by the Eccleſiaſticall Law, in the right of his office.

And here is implyed a Maxime of the Common Law, that where the right (as our Author here ſpeaketh) is ſpirituall, and the remedy therefore only by the Eccleſiaſticall Law, the conuſans thereof doth appertaine to the Eccleſiaſticall Court.

Sect.

Sect. 137.

2.E.3.27.28.

PEr certaine Diuine seruice destre fait, sicome a chaunter vn messe, &c. ou de distributer en Almoign, &c. Here be the two parts aboue mentioned, of Diuine Seruice, and for this Diuine Seruice certaine, the Lord hath his remedy, as here it appeares by our Author in foro seculari: for here it appeares, that if the Lord distrein for not doing of diuine seruice, which is certaine, he shall vpon his Auowry recouer dammages at the Common Law, that is, in the Kings temporall Court, for the not doing of it. And if issue be taken vpon the performance of the Diuine Seruice, it shall be tried by a Jurie of twelue men, because albeit the seruice be spirituall, yet the dammages are temporall, and so is the Seigniorie also.

38.H.6.26,27.

And here is implyed another Maxime of the Law, that where the Common or Statute Law giueth remedy, in Foro seculari, (whether the matter be temporall or spirituall) the Conusans of that cause belongeth to the Kings temporall Courts onely, vnlesse the iurisdiction of the Ecclesiasticall Court bee saued or allowed by the same Statute, to proceed according to the Ecclesiasticall Lawes.

Max.

2.E.6.ca.13. versus finem. 13.E.3.ca.5. 21.H.7.c.8. 1.El.ca.2. 13.El.ca.1. 23.E.ca.1.1.1.Iac.6.11. & 12.

¶ *Ou de distributer en almoign al cent pours homes.* Here note that the Almes and Releefe of poore people being a worke of charitie, is accounted in Law diuine Seruice, for what herein is done to the Poore, for Gods sake, is done to God himselfe.

¶ *Poet distrein, &c.* Here (&c.) includeth many

¶ MEs si vn Abbe ou Prior tient de son Seignior p certaine Diuine Seruice en certaine dest̃ fait, sicome a chaunter vn messe chescun vend̃ die en le Semaine pur les Almes, vt supra, ou chescun an a tiel iour a chaunter placebo & dirige, &c. ou de trouer vn chapleine de chanter messe, &c. ou de distributer en Almoigne al cent pours homes cent deniers a tiel iour, en tiel case, si tiel Diuine Seruice ne soit fayt le Seignior poet distreyner, &c. pur ceo que le Diuine Seruice est mise en certaine per lour Tenure, que le Abbée ou Prior deuoit fait̃. Et en tiel case le Seignior auera Fealtie, &c. come il semble. Et tiel Tenure nẽ passe dit Tenure en Frankalmoigne, mes est dit Tenure per Diuine Seruice, car en Tenure en Frankalmoigne nul mention est fait dascun manner de Seruice, car nul poet tener en Frankal-

BVt if an Abbot or Prior holds of his Lord by a certaine Diuine Seruice, in certaine to bee done, as to sing a Masse euerie Friday in the weeke, for the Soules, *vt supra*, or euerie yeare at such a day to sing a *Placebo & Dirige*, &c. or to finde a Chaplain to sing a Masse, &c. or to distribute in almes to an hundred poore men an hundred pence at such a day. In this case if such Diuine Seruice bee not done, the Lord may distreine, &c. because the Diuine Seruice is put in certaine by their Tenure, which the Abbot or Prior ought to doe. And in this case the Lord shall haue Fealtie, &c. as it seemeth. And such Tenure shall not bee said to bee Tenure in Frankalmoigne, but is called Tenure by Diuine Seruice: For in Tenure in Frankalmoigne, no mention is made of any manner of Seruice: For none can hold in Frankalmoigne, if there bee expressed any manner

moigne

moigne, ſi ſoit expreſſe aſcun manner de certaine ſeruice que il doit faire, &c. of certaine Seruice that hee ought to doe, &c.

excellent things, as when, where, and what may be diſtreined, of all which there is ſtatute giuen in their proper places.

¶ *En tiel caſe le Seignior auera fealtie, &c. come ſemble.* For as it hath beene ſaid, Fealty is incident to euery Tenure, ſauing the Tenure in Frankalmoigne, and where the Lord may diſtreine, there is fealty due. And Britton calleth this Tenure (by Diuine ſeruice) Aumone, and not libera Eleemoſina. And, ſaith he, Tenure en aumone eſt terre ou tenement que eſt done a aumone, dount aſcun ſeruice eſt retenue al feoffor. Brit. fo. 164.

¶ *&c.* And here (&c.) implieth Diſtreſſe, Eſcheat, and the like.

¶ *Et tiel Tenure neſt paſſe dit Tenure en Frankalmoigne, eſt dit tenure per Diuine ſeruice, &c.* And therefore our old Booke diuided Spirituall Seruice into free almes, (which was free from any limitation of certainty) and almes, becauſe the Tenants were bound to certaine diuine Seruices. 33.H.6.fol.6. Brit.ca.66.

¶ *Sil ſoit expreſſe aſcun manner de certaine ſeruice.* This holdeth where the certainty is reſerued vpon the originall Grant. If lands were giuen to hold In libera Eleemoſina, reddendo a rent, it ſeemeth the reſeruation of the rent to be void, * becauſe it is repugnant and contrary to the former grant, in libera Eleemoſina. 13.E.1.Coune de Vouch. 118. * 13.H.4.tit. Meſne.74. 30.E.3.30. 9.E.2.Aumoſne 224. 32.E.1.Tenure 31. 26.Aſſ.60. 21.H.6.17. Trin.4.E.3.F.N.B.251.f. 15.E.3. ordre 4. 11.Aſſ.22.30. 33.Aſſ.Pl.6.

Vide Trin.4.E.3. and F.N.B.231.f. That an Abbot or Prior that hold in Frankalmoigne, ſhall not be charged with a Corody. Alſo lands holden in Frankalmoigne cannot (l) be ancient Demeſne, in reſpect of charges incident thereunto. (l) 32.H.1.ani Dem 39. 8.E.3.3.

¶ *Que il doit faire, &c.* Here by (&c.) is vnderſtood temporall or ſpirituall Seruice alſo which he ought to doe corporally, or render, or pay.

There were within this Realme of England one hundred and eighteene Monaſteries, founded by the Kings of England, whereof ſuch Abbots and Priors as were founded to hold of the King per Baroniam, and were called to the Parliament by Writ, were Lords of Parliament, and had places & voices there: * And of them there were twenty ſeuen Abbots and two Priors as by the Rolles of Parliament appeares: But ſince our Author wrote, all theſe (as hath beene ſaid) are diſſolued. King Stephen did found the Abbey of Feuerſham in Kent, Et dedit Abbati & Monachis, & ſucceſſoribus ſuis Manerium de Feuerſham in Com. Kanc. ſimul cum Hundredo, &c. tenendum per Baroniam, &c. Who albeit he held by a Barony, yet becauſe he was neuer (that I (m) finde) called by Writ, he neuer ſate in Parliament. *For example, Rot. Parl. 5 H.8. & 21.H.8. &c. 94. a. (m) Cart. Pat. 30.R.1. concerning this foundation is to be pleaded.

All the Archbiſhops and Biſhops of England haue beene founded by the Kings of England, and doe hold of the King by Barony (as before hath beene ſaid) and haue beene all called by Writ to the Court of Parliament, and are Lords of Parliament: As (amongſt many) taking one notable Record, (o) Mandatum eſt omnibus Epiſcopis, qui conuenturi ſunt apud Gloceſtriam, die Sabbathi in Craſtin Sanctæ Katherinæ, ſtrictè inhibendo quod ſicut Baronias ſuas quas de Rege tenent, diligunt, nullo modo præſumant conſilium tenere de aliquibus quæ ad Coronam Regis pertinent, vel quæ perſonam Regis, vel ſtatum ſuum, vel ſtatum conſilii ſui contingunt, ſcituri pro certo, quòd ſi fecerint, Rex inde ſe capiet ad Baronias ſuas. Teſte Rege apud Hereford, 23 Nouemb &c. And the Biſhoprickes in Wales were founded by the Princes of Wales: and the Principality of Wales was holden of the King of England, as of his Crowne: and when the Prince of Wales committed treaſon, rebellion, &c. the Principality was forfeited, and the Patronages of the Biſhops annexed to the Crowne of England, ſo as the King is to haue Penſions for his Chaplaines, and Corodies for his Vadelets, of them, as of Biſhops founded by himſelfe. And vide Mich. 10.H.4.Rot.60. Wallia coram Rege, that the iudgement was giuen accordingly againſt the Biſhop of Saint Dauids in Wales, Per Iuſticiarios de vtroque Banco & alios de perito conſilio Domini Regis. And the Biſhops of Wales are alſo called by Writ to Parliament, and are Lords of Parliament, as Biſhops of England be. (o) Ex Rot. Pat. de anno 18.H.3.M.17. 10.H.4. fo.6.b.

Sect. 138.

¶ Item ſi ſoit demand, ſi tenn en frankmariage ferra fealtie a le doñ ou a

Alſo if it bee demanded, if tenant in frankmariage ſhall doe fealtie to the do-

¶ *E quel ſerra inconuenient, &c.* An argument drawne from an inconuenience, is forcible in Law, as hath beene obſerued V. Sect. 87.136.201.269. 440.478.665.722.

40.Ass.27.

Linc.fo.50.b. 42.E.3.5.28 E.3.395. 20.H.6.28.

ued before, and shall be often hereafter. Nihil quod est inconueniens, est licitum. And the law that is the perfection of reason, cannot suffer any thing that is inconuenient.

It is better, saith the law, to suffer a mischiefe (that is peculiar to one) than an inconuenience that may preiudice many: See more of this after in this chapter.

Note, the reason of this diuersity, betweene Frankalmoigne and Frankmariage, standeth vpon a maine Maxime of Law, that there is no land, that is not holden by some seruice spirituall or temporall, and therefore the donee in Frankmariage shall doe fealty, for otherwise hee should doe to his Lord no seruice at all, and yet it is Frankmariage, because the Law createth the seruice of Fealty for necessity of reason, and auoiding of an inconuenience. But tenant in Frankalmoigne doth spirituall and diuine Seruice, which is within the said Maxime, and therefore the Law will not cohoyt him to doe any temporall seruice. See the next section.

ſes heires deuant le quart degree passe, &c. il semble que cy, Car il nest pas semble quant a cel entēt a tenant en frankalmoigne, pur ceo que tenant en frankalmoigne ferra, p cause de sa tenure, diuine seruice pur son Sñr come deuant est dit, & ceo il est charge a fait p la ley del saint esglise, & pur ceo il est excuse & discharge de fealty, mes tenant en frankemariage ne ferra pur son tenure tiel seruice, & sil ne ferra fealtie, dongz il ne ferra a son Seignioz ascun māner de seruice, ne spirituall ne tempoz al, le quel serroit inconuenient & encount reason que home serra Tenant destate denheritance, a vn auter, & vncore l' sñr auera nul manner de seruice de luy, & issint il semble que il ferra fealtie a son sñr deuant le quart degree passe. Et quāt il ad fait fealty il ad fait touts ses seruices.

nor or his heires before the fourth degree be past, &c. it seemeth that he shall, for he is not like as to this purpose to tenāt in frankalmoigne, for tenant in frankalmoigne by reason of his tenure shall doe diuine seruice for his Lord, (as is said before) and this he is charged to doe by the Law of holy Church, and therefore he is excused and discharged of fealty, but tenant in frankmariage shall not doe for his tenure such seruice, and if he doth not fealty, he shall not doe any manner of seruice to his Lord neither spirituall nor temporall, which would be inconvenient, and against reason, that a man shall be tenant of an estate of inheritāce to another, and yet the Lord shall haue no manner of seruice of him, and so it seemes he shall doe fealtie to his Lord before the fourth degree be past. And when hee hath done fealtie, he hath done all his seruices.

Et encounter reason. And this is another strong argument in Law, Nihil quod est contra rationem est licitum. For reason is the life of the Law, nay the common Law it selfe is nothing else but reason, which is to be vnderstood of an artificiall perfection of reason, gotten by long study, obseruation, and experience, and not of euery mans naturall reason, for, Nemo nascitur artifex. This legall reason, est summa ratio. And therefore if all the reason that is dispersed into so many seuerall heads were vnited into one, yet could he not make such a Law as the Law of England is, because by many succession of ages it hath beene fined and refined by an infinite number of graue and learned men, and by long experience growne to such a perfection, for the gouernment of this Realme, as the old rule may be truly verified of it, Neminem oportet esse sapientiorem legibus: No man (out of his owne priuate reason) ought to be wiser than the Law, which is the perfection of reason.

Sect.

Sect. 139.

CEt ſi vn Abbe tiēt de ſon ſeignior en frankalm. et l'abbe et le couent ſouth lour common ſeale alien meſmes les tehements a vn ſeculer home en fee ſimple, en ceo cas le ſeculer home ſerra fealtie a l'Seignior, pur ceo que il ne poit tener de ſon Sñr en frankalmoigne. Car ſi le Seignior ne doit auer de luy fealty, donque il auera nul manner d' ſeruice, que ſerroit inconuenient, ou il eſt Sñr, & le tenement eſt tenus de luy.

AND if an Abbot holdeth of his Lord in frankalmoign, and the Abbot and Couent vnder their commō ſeale alien the ſame Tenements to a ſecular man in fee ſimple, In this caſe the ſecular man ſhall doe fealty to the Lord, becauſe hee cannot hold of his Lord in Frankalmoigne, for if the Lord ſhould not haue Fealtie of him hee ſhould haue no manner of ſeruice, which ſhould bee inconuenient where he is Lord, and the tenements be holden of him.

CThis caſe is worthy of great obſeruation, for hereby it appeareth, that albeit the Alienors held not by Fealty nor any other terrene ſeruice but onely by ſpirituall ſeruices and thoſe incertaine, yet the alienee ſhall hold by the certaine ſeruice of fealtie (and of this opinion is Littleton, agreeable with our bookes in former Authorities) for the law createth a new temporall ſeruice out of the Land to be done by the Alienee, wherewith the Abbot was not formerly charged, for the auoi-ding of an inconuenience, viz. that the feoffee ſhould doe no manner of ſeruice, and conſequently that the land ſhould be holden of no man, wherein it is to be remembred that (as hath beene ſaid before) all the lands and tenements in England in the hands of any ſubiect, are holden of ſome Lord or other, and that euery Tenant muſt doe ſome kinde of ſeruice. And that all Lands and Tenements are holden either mediately or immediately of the King, for originally all lands and tenements were deriued from the Crowne. And it is to be obſerued that when the Law createth any new tenure, it is the loweſt, (viz. Tenure in Socage) and with the leaſt ſeruice that can be done, and neereſt to the freedome of the former ſeruice, as in this caſe a Tenure in Socage by Fealty only, is created by the Law, which is the loweſt and leaſt ſeruice the Law can create, becauſe Fealty is incident to euery Tenure except Tenure in Frankalmoigne, for if it ſhould create any other ſeruice, it muſt create Fealty alſo. And the Law according to equity and Juſtice, giueth this Fealty to the Lord, of whom the land was before holden in Frankalmoigne. And laſtly, the Law ſo abhorreth an inconuenience, as that it createth out of the Land a new ſeruice for auoiding thereof. It appeareth by our bookes, that a Seignior in Frankalmoigne may be granted ouer, and conſequently the Tenant ſhall hold of the Grantee by Fealtie only, and therefore Britton ſaid well, that no ſeruice could be demanded of a tenant in Frankalmoigne, tant come les terres remaine en les maines les feoffees.

31.E.3. Ceſſant 22. 33.H.6.67. 21.E.4.11. lib.9.fol.123. Anth. Lowes caſe.

Lib.9.fol.123.in Anth. Lowes caſe.

42.Aſſ. Pl.6. Britton 164.b.

Sect. 140.

CItem ſi home graunta a cel iour a vn Abbe, ou a vn Prior terres ou tenements en frankalmoigne, ceux poit (frankalmoigne) ſont

ALſo if a man grant at this day to an Abbot or to a Prior, Lands or tenements in Frankalmoigne, theſe words (frankalmoign) are voide, for it is or-

CO*Rdeine per le ſtatute.* Here it appeareth by the authority of Littleton, that this is a Statute, and yet the King alone ſpeaketh, viz. Dominus Rex in Parliamento ſuo, &c. ad inſtantiam magnatum regni ſui conceſſit, prouidit & ſtatuit.

Vid.l.8.the Princes case.

But because it is Dominus Rex in Parliamento, &c. conceſſit, it is as much in this caſe (being an ancient ſtatute) as Dominus Rex authoritate Parliamenti conceſſit. Secondly, It is (amongſt other acts of Parliament) entred into the Parliament Roll, and therefore ſhall be intended to bee ordained by the King, by the conſent of the Lords & Commons in that Parliament aſſembled. Thirdly, It is a generall Law, whereof the Iudges may take knowledge, and therefore it is to bee determined by them, whether it be a ſtatute or no. Now for the diuers formes of Acts of Parliament, you may read them in the Princes caſe, vbi ſupra.

¶ *Appel Quia emptores terrarum.* This ſtatute is called ſo, because the ſtatute beginneth with theſe words, Quia emptores terrarum.

¶ *Nul poet aliener, &c. terres in fee ſimple de tener de luy meſme.*

This is iuſtly inferred vpon the Statute, but the letter of the Statute is, that Feoffatus teneat terram illam de capitali Domino, &c. So as by the authority of Littleton, hee that citeth a Statute, is not bound to recite the very words thereof, ſo long as hee miſſeth not of the ſubſtance and neceſſary conſequence thereupon, & yet the ſafer way is, to vouch the words of a Law as they be.

¶ *Granta per licence meſme les tenements, &c.*

13.E.3.tit.releaſe 33. 27.H.8.F.N.B.211.I.

Here Littleton ſpeaketh of a licence, or a diſpenſation within the ſaid Statute of Quia emptores terrarum (and mentioneth no other Statute) which may be done by the King and all the Lords immediate & mediate, for it is a rule in Law, Alienatio, licet prohibeatur, conſenſu tamen omnium, in quo-

voides, pur ceo que il eſt ordeine per le ſtatute que eſt appelle; Quia emptores terrarum (que leſtatut fuit fait, Anno 18. Ed. 1.) que nul poit aliener ne graunter terres ou tenements en fee ſimple, a tener de luy meſme. Iſſint ſi hõe ſeiſie de certaine tenements quẽr il tient de ſon Seignior per ſeruice de chiualer, & a cel iour il, &c. granta per licence meſmes les tenements a vn Abbe, &c. en Frankealmoigne, Labbe tiendra immediatment meſmes les tenemẽts per ſeruice de Chiualier de meſme le ſeignior, de q̃ ſon graunтor tenoit, & ne tiendra my de ſon grant en frankalmoigne, p cauſe de meſme leſtatut, iſſint que nul poit tener en frankalmoigne, ſi non q̃ ſoit per title de preſcription, ou per force de graunt fait a aſcun õ ſes predeceſſors, deuant q̃ meſme le ſtatute fuit fait. Mes le roy poit doner terres ou tenements en fee ſimple, a tener en Frankalmoigne, ou per auters ſeruices, car il eſt hors de cas del eſtatute.

dained by the Statute which is called, *Quia emptores terrarum*, which was made *Anno* 18. *E.* 1.) that none may alien nor grant Lands or Tenements in Fee ſimple to hold of himſelfe. So that if a man ſeiſed of certain tenements which he holdeth of his Lord by Knights Seruice, and at this day he, &c. granteth by licence the ſame Tenements to an Abbot, &c. in Frankalmoigne, the Abbot ſhall hold immediately the Tenements by Knights ſeruice of the ſame Lord of whom his Grantor held, and ſhall not hold of his Grantor in Frankalmoigne, by reaſon of the ſame Statute. So that none can hold in Frankalmoigne, vnleſſe it bee by tittle of preſcription, or by force of a grant made to any of his Predeceſſours before the ſame Statute was made: but the King may giue Lands or Tenements in Fee ſimple to hold in Frankalmoigne, or by other ſeruices, for hee is out of the caſe of that Statute.

quorum fauorem prohibita est, potest fieri, and quilibet potest renunciare iuri pro se introducto: and the licence of Lords immediate, and mediate in this case shall enure to two intents, viz. to a dispensation both of the statute of Quia emptores terrarum, and of the Statutes of Mortmaine, as Littleton here implieth, because their deeds shall be taken most strongly against themselues. But it is a safe and good policy in the Kings licence to haue a non obstante also of the Statutes of Mortmaine, and not only a non obstante of the Statute of Quia emptores terrarum. But it appeareth by Littleton (which is a secret of Law,) that there needeth not any non obstante by the King of the Statutes of Mortmaine, for the King shall not be intended to be misconusant of the Law, and when he licenseth expressly to alien to an Abbot, &c. which is in Mortmaine, he needs not make any non obstante of the Statutes of Mortmaine, for it is apparant to be granted in Mortmaine, and the King is the head of the Law, and therefore Præsumitur Rex habere omnia iura in scrinio pectoris sui, For the maintenance of his grant to be good according to the Law, for which cause of purpose Littleton maketh no mention of any licence in Mortmaine. Dispensatio, est mali prohibiti prouida relaxatio, vtilitate seu necessitate pensata.

43. Ass. Pl. 10. 9. E. 4. b. 11. Pl. Com. 502. 503. Grendons case. Vid. 9. 10. 25 26. 31. & 110. Vide Sect. 686.

¶ *Labbe tiendra, &c. per seruice de chiualer.* For although by the death of the Abbot there is neither ward, marriage, nor relefe due, yet he holdeth by Knights seruice, albeit the Lord cannot haue the fruit of it, and if the Abbot with the consent of the Conuent alien the land ouer to a man and his heires, there is the ward, marriage, and relefe reuiued. But by prescription (as it hath beene said) the successor of an Abbot may pay relefe. An Abbot or Prior, &c. that holdeth Lands by Knights seruice, albeit he ought not in respect of his profession, to serue in warre in proper person, yet must he finde a sufficient man, conueniently arraied, for the warre, to supply his place. And if he can finde none, then must he pay Escuage, &c. for his profession doth not priuilege him, but that the Kings seruice in his warre must be done, that belongeth to his tenure.

Little. fol. 100. a. ✶

8. R. 2. relief. 14. 5. H. 4. 2. a.

Vide Little. fol. 100.

Fort. 96

Nota (Reader) since Littleton wrote, a man might either in his life time, or by his last Will in writing, (m) giue Lands, Tenements, &c. to any spirituall body Politick, or Corporate, to be holden of himself in Frankalmoigne, or by Diuine seruice, as by the statute of 1. & 2. Phil. & Mariæ (which indured for twenty yeeres) appeareth, which statute, since that time, hath beene fauourably and benignly expounded.

(m) 1. & 2. Ph. & Mar. c. 8. Mich. 8. & 9. Eliz. Dyer. fol. 255.

¶ *Issint que nul poet tener en Frankalmoigne, si non que soit per title de prescription, &c.* It is to be vnderstood, that a man seised of lands may at this day giue the same to a Bishop, Parson, &c. and their successors in Frankalmoigne, by the consent of the King, and the Lords mediate and immediate, of whom the Land is holden, for the rule is, Quilibet potest renunciare iuri pro se introducto.

12. E. 4. 4.

27. H. 8. 2. E. 2. auowrie 185.

So if an Ecclesiasticall Person hold lands by fealty and certaine rent, the Lord at this day may confirme (n) his estate, to hold to him and to his successors in Frankalmoigne, for the former Seruices be extinct, and nothing is reserued but that he holds of him, and so he did before.

(n) 4. E. 3. 21. 22. E. 3. 15. 38. H. 6. 25. Litt. cap. confirmat. 123.

¶ *Mes le roy poet, &c. car il est hors de case del statute.*

It is cleere that the King is out of the case of the Statute, for the Statute is Quod feoffatus teneat terram illam, &c. de capitali Domino feodi, &c. and this cannot be intended of the King, who is superior to all, and inferiour to none, but where the King is bound by Acts of Parliament, and where not, Vide lib. 11. fol. 66. Magdalen Colledge Case.

Lib. 11. fol 66. Magdalen Colledge case.

Sect. 141.

¶ Et nota q̃ nul poit tener terres ou tenements en frankalmoigne, forspriſe del grantor, ou de ses heires. Et pur ceo il est dit, que si soit Seignior, mesne & tenant, & le tenant est vn Abbe que tient

And note that none may hold lands or tenements in Frankalmoigne, but of the Graunter, or of his heires. And therefore it is said, that if there be Lord, Mesne, and tenant, and the tenant is an Abbot which

¶ *Forspriſe del grantor ou de ses heirs.* The Tenure in Frankalmoigne is an incident to the inheritable blood of the Grantor, and cannot be transferred nor forfeited to any other, no more than a Founderships of a house of Religion, which is intended to bee in Frankalmoigne, or Homage Auncestrel, or the writ of Contra formam Feoffamenti, or the writ of Contra

14. E. 3. tit. Mesne 7. 14. H. 3. tit. disclaimb. 33. 15. E. 3 confirm 8. 27. H. 8. b Temps E. 2. garr. 90. 45. E. 3. 23. 47. H. 3. garr. 99. 11. H. 4. 52. 14. H. 4. 5. 10. H. 7. 11. 28. Ass. 33. 18. E. 3. 18. 22. E. 3. 18. Corody. Broke 5. 22. H. 6. 50. 4. E. auowrie 201. 202. 19. E. 3 ibid. 1. 2. 11. E. 3 ibi 100. 30. 11. 6. 7. 31. H. 8. Dyer 51. F. N. B. 16. F. N. B. 211. C.

Contra formam collationis, or any other incident to their inheritable blood. But it is no incident inseparable, for the Lord may release to the Tenant in Frankalmoigne, and then the tenure is extinct, and he shall hold of the Lord Paramont by Fealty, as in the case of Littleton, Sect 139.

15. E 3. confirm. 8.

¶ *Ou de ses heires.* Here (or) hath the sense of (and) for a man cannot at this day grant lands in taile and reserue a Rent to his heires, and exclude the Grantor himselfe, for the heire cannot take any thing in the life of the Ancestor, neither can the heire take any thing by

Vide 15. E. 4.

de son mesne en frãkalmoigne, si le mesne deuy sans heire, donque le mesnaltie deuiendra per escheate al dit Seignior Paramont, & Labbe adonque tient de luy immediate per fealtie tantum, & ferra a luy Fealty, pur ceo que il ne puit tener de luy en Frankalmoigne, &c.

holdeth of his Mesne in Frankalmoigne, if the Mesne die without heire, the Mesnaltie shall come by Escheat, to the said Lord Paramont, and the Abbot shall then hold immediatly of him by fealty only, and shall doe to him fealty, because he cannot hold of him in frankalmoigne, &c.

descent, when the ancestor himselfe is secluded. But if a man had granted lands at the Common law to hold of his heires, these words (to hold of his heires) are void, and he shall hold of the Grantor as he held ouer, which he should haue done, if he had made no reseruation at all.

33. E. 3. tit. Annuity 52. 3. Ass. Pl. 8, &c.

And albeit Littleton saith that no man can hold lands in Frankalmoign, but of the Grantor or his heires, yet might an Abbot by assent of his Couent, or a Bishop with assent of his Chapter, & such like, by license as is aforesaid, haue giuen lands in Frankalmoigne, to hold of them and their successors, and as Littleton himselfe agreeth, the King may giue land in Frankalmoigne. In which case the land shall be holden of him, his heires and successors.

¶ *Et pur ceo est dit si soit Seignior, mesne & tenant, & le tenant est vn Abbe, &c.* By this it appeareth that if the Seigniory be transferred by Act in Law to a stranger, and thereby the priuity is altered, that the tenure in Frankalmoigne is changed to a tenure in Socage by fealty, as well as it appeareth before when the Seigniory or Tenancy is granted to another, and the Law in this case also createth a new fealty, wherewith the Land was not charged before.

¶ *Donques le mesnaltie deuiendra per escheat al dit Seignior Paramont.* This new Tenure created by Law, shall vpon the Escheat drowne the Seigniory, for alwayes the Seigniory nearer to the land drownes the Seigniory, that is more remote off, and yet the Lord in this case to whom the Mesnalty is escheated, shall hold by the same services that held before the Escheat.

2. E. 4. 4. b.

7. E. 4. 12. a.

Sect. 142.

¶ *Home de Religion.* And yet this case extendeth to all Ecclesiasticall persons that hold in Frankalmoign, be they secular or regular, for the mesne ought to acquite all of them, for they be bound (a) to make prayers for their founder, and his heires, and in consideration of those prayers, the founder, &c. is bound to pay to the chiefe Lord all rents and services issuing out of that land, as it appeareth by that which followeth.

(a) Pl. Com. 306. b. in Shoringtons case. 33. H. 6. 6. 39. H. 6, 29. 14. E. 3. meine 7.

¶ *De luy acquiter.*

¶ Et nota q̃ lou tiel hõe de religion tient ses Tenements de son Sñr en frankalmoign, son Sñr est tenus p la ley de luy acquiter de chescun mãner õ seruice, que alcun Sñr paramont de luy voet auer ou demander de mesmes les tenements, et sil ne

And note that where such man of religion holds his tenements of his Lord in frankalmoigne, his Lord is bound by the law to acquite him of euery manner of seruice which any Lord paramont will haue or demand of him for the same Tenements, and if he doth not acquite

luy

luy aquita pas, mes ſuffra luy deſtre diſtraine, &c. donqz il auera enuers ſon ſeignioz un briefe de Meſne, & recouera enuers luy ſes dammages & ſes coſtes de ſon ſuit, &c.

him, but ſuffereth him to be diſtreined, &c. hee ſhall haue againſt his Lord a writ of Meſne, and ſhall recouer againſt him his damages and coſts of ſuit, &c.

Acquiter is compounded of ad, and the old verbe quietare, and ſignifieth in Law (b) to diſcharge, or keepe in quiet, and to ſee that the Tenant be ſafely kept from any entries, or other moleſtation for any manner of ſeruice, iſſuing out of the Land to any Lord, that is aboue the Meſne. (c) And hereof commeth (d) acquitall, and quietus eſt, (that is) that he is diſcharged; and he that is diſcharged of a felony, &c. by iudgement, is ſaid to be acquited of the felony, acquietatus de felonia; and if he be drawne in queſtion againe, he may plead (e) auerfoits aquite: And therefore if ſuch a tenant, as Littleton here ſpeaketh of, be diſtrained by any Lord paramount, the Meſne (to keepe the Tenant quiet) may put his beaſts in the pownd, in ſtead of the beaſts of the Tenant.

(h) Fleta lib. 2. cap. 43. Britton fol. 58. 59. Vide hereafter in this Sect. in briefe de Meſne.

(c) Vide Sect. 142. 540.
(d) 8. E. 2. Corone 424. 20 E. 2. Ibid. 232. Stanf. Pl. Corone 105.
(e) 4. E. 3. 35. 17. E. 3. 44. 7. H. 4. 18. 34. H. 6 47. 13 E. 4. 6. F. N. B. 136. Lib. 9. fo. 110. 111. in Treſhams caſe.

There be three kinds of Acquitals. 1. An acquitall by Deed. 2. An acquitall by Preſcription. 3. An acquitall by Tenure: and by Tenure foure manner of wayes. 1. By owelty of ſeruices, for ſeruice acquites ſeruice. 2. Tenure in Frankalmoigne, whereof Littleton here ſpeaketh. 3. Tenure in Frankmariage. 4. Tenure by reaſon of Dower.

3. E. 3. 14. 77. 5. E. 3. 11. 4. H. 6. 28. 39. E. 3. 19. 11. H. 4. 52. 12. H. 4. 9. 14. H. 4. 17. F. N. B. 136. b. h. 39. H. 6. 30. 33. H. 6. 7. F. N. B. 135. m. 4. E. 4. 35. 12. H. 4. 9. 28. E. 3. 95. 17. E. 3. 39.

¶ *De cheſcun manner de ſeruice.* (f) And yet not of ſeruices only, as Homage, Fealty, Rent worke, and other ſeruices, but alſo of improuement of ſeruices, as if he be diſtreined for reliefe, Aide pur file marier, aide pur faire fitz chiualer, &c. Alſo for ſuit ſeruice to a Hundred, (g) but for ſuit reall in reſpect of reſiance within any Hundred, Leet, or Turne, the Meſne ſhall make no acquitall, for that is in reſpect of his perſon and reſiancy.

(f) 39. H. 6. 31. 2. 9. E. 4. 27. F. N. B. 136. m. 17. E. 2. Meſne. 5. E. 3. 49. *Bracton lib. 2. fol. 84.
(g) 4. E. 3. 42. For this writ ſee the Regiſter fol. and F. N. B. fol. 135. Mirror cap. 2. Sect. 13. Bracton lib. 2. fol. 84. Britton fol. 58. Fleta lib. 2. ca. 43. Weſtm. 2. cap. 9.

¶ *Briefe de meſne.* Breue de medio, a writ of Meſne, ſo called by reaſon of the words of the writ of Meſne, which are Vnde idem A. qui medius eſt inter C. & præfatum B. A. who is Meſne betweene C. that is the Lord paramount, and B. that is the Tenant parauaile. And note, that there be ſix writs in Law that may be maintained, quia timet, before any moleſtation, diſtreſſe, or impleading: as 1. a man may haue his writ of Meſne (whereof Littleton here ſpeakes) before he be diſtreined. 2. A Warrantia cartæ, before he be impleaded. 3. A Monſtrauerunt, before any diſtreſſe or vexation. 4. An Audita querela, before any execution ſued. 5. A Curia claudenda, before any default of incloſure. 6. A Ne iniuſtè vexes, before any diſtreſſe or moleſtation: and theſe be called Breuia anticipantia, Writs of preuention.

Mirror cap. 2. Sect. 13. Bracton lib. 2. fol. 84. Britton fol. 58. Fleta lib. 2. ca. 43. Weſtm. 2. cap. 9.

¶ *Et recouera vers luy ſes damages.* It is to be knowne that there be two ſeuerall iudgements in a writ of Meſne, one at the Common law, another by the Statute of W. 2. cap. 9. At the Common law he ſhall haue iudgement to recouer his acquitall, and if he bee diſtreined or damnified, his damages and coſts: and the proceſſe at the Common Law was Summons, Attachment and Diſtreſſe infinite, in the ſame County where the writ is brought. * The iudgement by the ſaid ſtatute of W. 2. is a foreiudger of the Meſnalty, and that in two ſeuerall caſes, one vpon Proceſſe giuen by the ſaid ſtatute, viz. Summons, Attachment and Grand diſtreſſe, and if he commeth not, and the writ be returned, hee ſhall bee foreiudged: the other caſe is where the Tenant recouereth his acquitall in a writ of Meſne, if he be not acquited afterwards, he ſhall haue a writ of Diſtringas ad acquietandum againſt the ſame Meſne, and if he commeth not, he ſhall be foreiudged by his default of the Meſnalty, and ſo if he commeth, and it be found againſt him by verdict, he ſhall be foreiudged: but Foreiudger in that caſe is not giuen againſt his heire, for that the ſtatute ſpeaketh only of the Meſne, and not of his heires. And the iudgement, in caſe of foreiudgement is, quod T. (le Meſne) amittat ſeruitia de A. (le tenant) de tenementis prædictis, & quod omiſſo prædicto T. præfat' R. (le ſeignior paramount) modo ſit attendens & reſpondens per eadem ſeruitia per quæ T. tenuit. The ſaid Statute in caſe of foreiudgement, doth not binde a Feme couert, and yet if ſuch a iudgement be giuen againſt a Baron and Feme, it is not void, but erroneous, and to be reuerſed in a Writ of error, and ſo a foreiudgement againſt a Tenant in taile ſhall binde the iſſue in taile in an Anowry, vntill he reuerſeth it by error. If two Ioyntenants bring a Writ of Meſne, and the one is ſummoned, and ſeuered, the other cannot foreiudge the Meſne, for he ought to be attendant to the Lord paramount, as the Meſne was, and that cannot he be alone. And ſo it is if there bee two ioyntenants Meſnes, and in a Writ of Meſne brought againſt them, one maketh default, and the other appeares, there can bee no Foreiudger.

W. 2. ca. 9. Vide lib. 8. fo. 134. Mary Shepleys caſe.

*Bracton lib. 2. fol. 84. Fleta lib. 2. cap. 43.

46. E. 3. 31. 18. E. 2. tit. Meſne. F. N. B. 136. 2. H. 4. 7. 17. E. 3. Contra formam Collat. 1. F. N. B. 131.

7. E. 3. 41. tit. Meſne 18. 9. E. 2. ibid. 67. 14. E. 2. ibid. 70. Lib. 9. fol. 73. b. Doct. Huſſeys caſe.

If

If the Tenant be disseised, and the Disseisor in a writ of Mesne forjudge the meane, this shall not bind the disseisee. And so if the Mesne be disseised and a forjudgement is had against the Disseisor, this doth not binde the disseisee, for the words of the said Statute are Quando tenens sine prætudicio alterius quam medii attornare se potest capitali Domino.

But if the daughter, the sonne being in venter sa mere, be forjudged, it shall binde the sonne that is borne afterwards, because he had no right at the time of the forjudgement. And so if the Tenant enter in Religion, and his heire forjudgeth the Mesne, and then the Ancestor is deraigned, he shall be bound causa qua supra. If there be Lord, Prior, Mesne, and Tenant, the Mesne cannot be forjudged, because he alone can doe nothing to the prejudice or the disherison of his Church: And the like Law is of a Bishop, Parson, and the like.

No forjudgement can be but when there is but one meane betweene the Lord distreining, and the Tenant, because the Tenant upon the forjudgement cannot be attendant to the Lord distreining in respect there is a meane betweene them, and so the said statute prouideth for in expresse termes.

Nota, the Plaintife in a writ of Mesne, may chuse either Processe at the Common Law, or upon the said statute of W. 2. Forjudgement is called Foris iudicatio, and he that is forjudged Foris iudicatus. And Bracton hath this writ, Rex Vicecomiti, &c. & non permittas quod A. capitalis Dominus feodi illius habeat custodiam hæredis quia in Curia nostra forisjudicatur de custodia, &c. Fleta calleth it Abiudicationem, and thereupon commeth abiudicatus; for he saith, Post Proclamationem, &c. factam, abiudicetur medius de feodo, & seruitio suo.

ma scitis, non dū quæsitum est jus. 9. II. VII. 26

16. E. 3. Iudgm. 117.

W. 2. ca. 9.

50. E. 3. 22. F. N. B. 137. Bract. l. 4. 256. b. Brit. f. 58. b. Flet. li. 2. ca. 43.

Chap. 7. *Homage Auncestrell.* Sect. 143.

Tenure de homage auncestrel est, lou un Tenant tient sa Terre de son Seignior per homage, & meisme le Tenant & ses Auncestors que heire il est ont tenus meisme le Terre del dit Seignior, & de ses auncestors que heire le Seigniour est, de temps dont memorie ne court per homage, & ont fait a eux homage. Et ceo est appel homage auncestrel, per cause de continuance que ad este per title de Prescription en le Tenancie en le sanke le Tenaunt, & auxy en le Seignio-

Tenant by homage Auncestrell is, where a tenant holdeth his Land of his lord by homage and the same Tenant and his Auncestours whose Heire hee is, haue holden the same land of the same Lord, and of his Auncestors whose heire the Lord is, time out of memorie of man, by Homage, and haue done to them Homage. And this is called Homage Auncestrell, by reason of the continuance which hath beene by title of Prescription in the Tenancie in the bloud of the Tenant, and also in the Seigniorie in

Per title de Prescription en le Tenancie, en le sanke le tenant, & auxy en le Seigniorie en le sanke le Seignior.

9. H. 3. Vouch. 277. 47. H. 3. Garr. 99. Temps E. 1. Garr. 90. 4. E. 2. Vouch. 345. 45. E. 3. 43. 11. H. 4. 50. 4. H. 6. 26.

Here Littleton doth not define what homage Auncestrel is, but putteth an example in one case. For in the 146. Section, it appeareth, that blood is not alwayes necessary on the Lords side. In this example here put, there must be a double prescription, both in the blood of the Lord, and of the Tenant, and therefore I thinke there is little or no land at all at this day, holden by Homage Auncestrell.

Brit. fol. 170. 2.

And hereof it is said, Autant est le Seignior tenus a son homage, come le homage a son Seignior, forsque solement en reuerence. And herewith agreeth Bracton, Est tanta & talis connexio per homagium inter Dominum & tenentem, quod tantum debet Dominus tenenti, quantum tenens Domino, præter solam reuerentiam.

Prat. fol. 98. Glanu. lib. 9. ca. 4 5 6.

Treit a luy gar-

rie en le sanke le seignior. Et tiel Seruice de Homage Ancestrel trait a luy garrantie, cestascauoir, que le Seignior que est en vie & ad receiue le homage de tiel Tenant, doit garranter son Tenant quant il est implede de la terre tenus de luy per homage Ancestrel.

the bloud of the Lord. And such seruice of Homage Ancestrell draweth to it warrantie, that is to say, that the Lord which is liuing, and hath receiued the Homage of such Tenant ought to warrant his Tenant when he is impleaded of the land holden of him by Homage Ancestrell.

ranty. Hereby appeareth what a reuerend respect the Law hath to ancient inheritances continued in the bloud of the Lord and of the Tenant, for in this example put, if the continuance hath not bene in the bloud of both sides, no warranty belongeth to Homage Ancestrel, but if ancient continuance hath been on both sides, (m) then such Homage Ancestrell draweth to it warranty, so as ancient continued inheritance on both parties hath more priuiledge and account in Law, than inheritances lately or within memory acquired.

Vide Britton vbi supra. 14.H.6.25. 18.H.6.2.b. Glanuil.lib.9.c.4. 5.& 6. 9.H. 3. Voucher 277. 47.H.3.Voucher.270. 271. 43.E.3.3.a.

(m) See the second part of the Institutes vpon the 6. chapter of the statute of Bigamis.

If the Lord grant the seruices of his Tenant by Homage Ancestrel, the Tenant shall not be compelled in a per quæ seruitia to atturne, vnlesse the Conusee will grant in Court to warrant the Land vnto him. 18.H.6.2.b.per Newton.

If the Tenant vouch by force of this warranty in Law, it is a good counterplea, that the Tenant (or any one of his Ancestors) recessit de seruitio suo & fecit seruitium suum. A.B. sine aliqua coactione de sua propria voluntate. 9.H.3.Voucher 277.

¶ *Et ad receiue homage de tiel tenant.* (a) So as before homage received, the Tenant could not absolutely bind the Lord to warranty, and therefore of ancient time there lay (b) a Writ De homagio capiendo, for the Tenant against the Lord to compell him to receiue his homage for the benefit of his warranty, which writ you shall read in Bracton and (c) Britton, and the Processe, and manner of triall thereupon, and the same you shall finde in 47.H.3.

(a) 9.H.3.Voucher 277. Temps E.1.Gar.90. 45.E.3.23.
(b) Glanuil.lib.9.c.4.5. & lib.1.cap.3. Bracton lib.2.fol.83.
(c) Britton fol.172.173. 47.H.3.garrantie 99.

Sect. 144.

¶ Et auxy tiel seruice per Homage auncestrel trait a luy acquital. s. que le Sñr doit acquiter le Tenant enuers touts auters Sñrs paramont luy de chescun manner de seruice.

And also such seruice by Homage ancestrell draweth to it acquitall, s. that the Lord ought to acquite the Tenant against all other Lords paramont him of euery manner of seruice.

¶ *Trait a luy acquital.* Of acquitall somewhat hath beene said in the Chapter of Frankalmoigne. Sect.142, & 540.

Sect. 145.

¶ Et il est dit, q̃ si tiel tenant soit empleõ p vn Præcipe quod reddat, &c. & il vouche a garrantie son seignior, q̃ vient eins p̃ proces, & demanda del tenãt quel il ad de luy lier a

And it is said that if such tenant be impleaded by a *Præcipe quod reddat, &c.* and vouch to warrantie his Lord who commeth in by processe & demands of the tenant what he hath to binde

¶ *Vn Præcipe quod reddat.* This is vnderstood of the kings writ directed to the Sheriffe of the County where the Land lyeth, whereby the Sheriffe is authorised to command the Tenant of the land to yeild the same to the Demandant, and of these words of the Writ (Præcipe quod reddat) the Writ is so called. Writs of

of Præcipe be of foure kinds, Præcipe quod reddat, Præcipe quod faciat, Præcipe quod permittat, & Præcipe quod non permittat, &c. as appeareth by the Register.

Regist. 159.

¶ *Et il vouche a garrantie*, A voucher, (in Latin vocatio, or aduocatio is a word of Art, made of the Verbe voco, and is in (d) the vnderstanding of the Common Law, when the Tenant calleth another into the Court that is bound to him to Warrantie, that is, either to defend the right against the Demandant, or to yeeld him other land, &c. in value, and extendeth to Lands or Tenements of an estate of Freehold, or inheritance, and not to any Chattell reall, personall, or mixt, sauing only in case of a Wardship granted with warranty (as shall bee said more at large in the Chapter of Warranties) for in the other cases concerning chattels, the party, if he hath a warrantie, shall not vouch, but haue his action of Couenant, if he hath a Deed, or if it be by Parol, then an action vpon his case, or an action of Deceipt, as the case shall require. Now seeing that one Latine, French, or English word can haue this particular signification, therefore the Common Lawyer (that I may speake once for all) is driuen, as the professors of other liberall sciences vse to doe, to vse significant words framed by Art which are called vocabula artis, though they bee not proper to any language. Hee that voucheth is called the Vouchor vocans, and he that is vouched is called Vouchée Warrantus. (e) The processe whereby the Vouchee is called, is a summoneas ad warrantizandum, whereupon if the Sherife returneth that the Vouchée is summoned, and he make default, then a (f) Magnum cape ad valentiam is awarded, when if hee make default againe, then iudgement is giuen against the Tenant, and he ouer to haue in value against the Vouchée. If the Vouchée doe appeare and after make default, then Parvum cape ad valentiam is awarded, and if he make default againe, then iudgement as before. But if the Sherife returne, that the Vouchee hath nothing, then after writs of Alias and pluries, a Writ of sequatur sub suo periculo shall be awarded, and if the like returne be made, then shall the Demandant haue iudgement against the Tenant, but he shall not haue iudgement to recouer in value, because the Vouchée was neuer warned. And it appeareth that he hath nothing: but in the grand Cape ad valentiam, it appeareth, that he hath assets, and his making default after summons is an implied confession of the Warranty. And it is called a sequatur sub suo periculo, because the Tenant shall lose his land

(d) Mir. cap. 5. sect. 1. & 5. Bract. li. 5. fo. 380. 381. Brit. c. 75. de Gar. Vouch. Fleta l. 6. c. 23, 24. 25. 26. &c. optime. Lamb. Expli. Verb. Aduocare.

(e) V. Reg. Iud. for all these Iudicial Writs.

(f) V. Vet. N. B. 179. 186. 39. E. 3. 28. 14. H. 6. 7. 17. E. 3. 41. 3. H. 4. 4. 11. H. 4. 72. 45. E. 3. 19. F. N. B. 134, 135.

garranty, & il mẽ coment il & ses auncesters q̃ heire il est, ount tenus sa terre del vouchee & de ses auncesters, de temps dont memorie ne curt. Et si l'seignior que est vouche ne avoit resceiue pas homage del tenant ne dascun de ses auncesters, le seignior (sil voit) poit disclaimer en le seigniory, & issint ouste le tenant de son garrantie. Mes si le Sñr q̃ est vouch ad receiue homage de le Tenant, ou de ascun de ses auncesters, donques il ne disclaimera, mes il est oblige p̃ la ley de garranter le tenant, & donq̃ si le tenant perd̃ sa tre en default del vouchee il recouera en value enuers le vouchee de terres & tenements que le vouchee auoit al temps de le voucher, ou vnques puis.

him to warranty, and hee sheweth how hee & his ancestors whose heire hee is, haue holden their Land of the Vouchee and of his ancestors time out of minde of man. And if the Lord which is vouched hath not receiued homage of the Tenant, nor of any of his ancestors, the Lord (if hee will) may disclaime in the seigniory, and so ouste the tenant of his warrantie, but if the Lord who is vouched hath receiued homage of the tenant, or of any of his ancestors, then he shall not disclaime, but he is bound by the Law to warrant the tenant, and then if the tenant loseth his Land in default of the Vouchee, he shall recouer in value against the Vouchee of the Lands and Tenements which the Vouchee had at the time of the Voucher, or any time after.

land without any recompence in value, vnlesse he vpon that Writ can bring in the vouchee to warrant the land vnto him: and if at the Sequat' sub suo periculo the tenant and the Vouchee make default, and the Demandant hath iudgement against the Tenant, and after bringes a Scire fac: to haue execution, the Tenant may haue a Warrantia cartæ, and if he were impleaded by a stranger, he may vouch againe, but if he had iudgement to recouer in value, he shall neuer haue a Warrantia cartæ, or vouch againe, for by this iudgement to recouer in value, hee hath benefit of the warranty. And you shall find in bookes a recouery with a single Voucher, and that is when there is but one Voucher; and with a double Voucher, and that is when the Vouchee voucheth ouer, and so a treble Voucher, &c. Againe, you shall finde there also a forraine Voucher, and that is when the Tenant being impleaded within a particular iurisdiction (as in London or the like) voucheth one to warranty and prayes that he may be summoned in some other county out of the iurisdiction of that Court: this is called a forraine Voucher, but might more aptly be called a Voucher of a forrainer de forinsecis vocatis ad Warrantizandum. Note that by the Ciuill Law euery man is bound to warrant the thing that he selleth or conueyeth, albeit there be no expresse Warranty, but the Common Law bindeth him not, vnlesse there be a warranty, either in Deed or in Law for Caueat emptor, as shall be said more at large in the chapter of Warranty in the third booke. Glouc.ca.12.F.N.B.6.C

¶ *Le Seignior (sil voet) poet disclaimer* (u) *en le Seigniorie. Disclaimer, disclamare*, is compounded of de and clamo, and signifieth vtterly to renounce the Seigniorie. Brit.174.

(a) Note there be diuers kindes of Disclaymer, that is to say, a Disclaymer in the tenancie; a Disclaymer in the bloud; and a Disclaymer in the Seigniory; whereof Littleton here putteth his case. (a) 47.H.3. Disclaim.35. 16 H.7.1. 20.E.2.tit. Nuper ob.14.F.N.B.197. & 151.b.45.E.3.19.21. E.3.50.E.2.23.&c.

(b) But if the tenant in Frankalmoigne bring a Writ of Mesne against his Lord, the Lord cannot disclaime in the Seigniory, because he cannot hold of any man in Frankalmoigne, but of his Donor and his heires. And so note a diuersity betweene a Tenure in Frankalmoigne, whereby Diuine Seruice is maintained, and Homage Ancestrell which respecteth temporall Seruice. But if the Lord will not disclaime in the Seigniory, in the case of Homage Ancestrell, then albeit he hath not receiued Homage, he shall warrant the land. (b) 14 H.3.tit. Disclaim. b.33.

¶ *Si le Seignior que est vouche ad receiue homage, &c. il ne disclaymera*, Therefore it is good for the Tenant, to the intent to oust the Lord of his Disclaymer, in his voucher to alleage, that the Lord hath taken Homage of him, and if he alleage it not, and the Lord offer to disclayme, the Tenant may counterplead the same by acceptance of Homage, and the reason that the Lord cannot disclayme in that case is, for that he hath accepted his humble and reuerent acknowledgement to become his man of life and member and terrene honour, and to be faithfull and loyall to him for the Tenements which he holds of him, and against the acceptance hereof the Lord cannot disclayme. 47.H.3.Disclaim.35. V.Fract.l.4.c.2.b.16. H.7.1. Brit.175.174.

¶ *Que il auoit al temps del voucher*. Hereby it appeareth, that the Tenant shall not be driuen to recouer in value only those lands which the Lord had from that Ancestor which created the Seigniory, for that were in maner impossible, for that the Seigniory must be created before time of memory, and the first creation of the Seigniory did not create the warranty, but the continuance of both sides time out of minde created the warranty. And that is the reason that a Writ of Annuity shall not (c) lye against the heire by prescription because it cannot be knowne, whether he hath any land by descent from the said Ancestor, that first granted the Annuity. And here is a point worthy of obseruation that in the case of Homage Ancestrell, (which is a speciall Warranty in Law, by the authority of Littleton, the lands generally that the Lord hath at the time of the Voucher, shall be liable to execution in value, whether he hath them by descent or purchase. But in the case of an expresse Warrantie the heire shall be charged but only for such lands as he hath by descent from the same Ancestor, which created the Warranty. (c) 46.E.3.5.b.10.E.4. 10.b. 19.H.6.74. 37.H.6.19. 5.H.7.F.N.B.152.

Note, what priuilege this ancient Warranty (created by operation of Law) hath more than the expresse Warranty. And so you may obserue, that in this case, fortior & potentior est operatio legis quam dispositio hominis. 28.E.1.Vouch.291.9. Ed.2. War.Car.20.19.Fines. 127.

¶ *Al temps de voucher ou vnques puis*. This is euident and worthy of diligent obseruation, viz. that the lands of the Vouchee shall be liable to the Warranty, that the Vouchee hath at the time of the Voucher; for that the Voucher is in lieu of an action, and in a Warrantia cartæ, the land which the Defendant hath at the time of the Writ brought, shall be lyable to the Warranty. 20.E.3.3. 18.E.3.1. 2.H.4.10. 23.E.3.Recon. in valu.3. 16.E.3.Vouch.85.19. Edw.3. Vouch.24.22.E.3.Fitz. Nat.Bre.134.f.

Vpon a Iudgement in Debt, the Plaintife (d) shall not haue execution, but only of that land which the Defendant had at the time of the iudgement, for that the action was brought in respect of the person, and not in respect of the land. But if an Action of Debt be brought against 2.H.4.14. 42.E.3.1.42. a.17. 9.E.2.tit.Execut.249.

against the heire, and he alieneth, hanging the Writ, yet shall the land which her had at the time of the originall purchase be charged, for that the Action was brought against the heire in respect of the land. (c) If a man be Nonsuit, the land onely which he had at the time of the amerciament assessed shall bee charged, and not that which hee had at the finding of the pledges. For the amerciament is not in respect of the land, but of his want of prosecution, which was a default in his person. But the issues of a Juror shall bee leuied vpon the Feoffee, albeit they were not lost before the feoffment, because he was returned and sworne in respect of the land. Note the diuersitie.

(c) 22.Ass. pl.32.

52.E.1. Voucher 292. If a man giue lands in fee with Warrantie, and binde certaine lands specially to Warrantie, the person of the Feoffor is hereby bound, and not the land, vnlesse he hath it at the time of the Voucher.

Sect. 146.

Vide Britton.fol.58.110. *SOn Seigniorie est extinct, & le Tenant tiendra de seignior prochein Paramount, &c.* Here two things are to bs obserued: First, that by this disclaimer in the Seignorie, the Seignorie is (f) extinct in the land.

(f)45.E.3.7. 22.E.4.35.

Secondly, That after the Disclaimer the Tenant shall hold of the next Lord Paramount, by the same services, as the mesne so disclaiming held before.

Vide Sect.143. *Si vn Abbe ou Prior soit vouch, &c. vncore, &c. vncore il ne poet disclaymer, &c.* Here it appeareth of the Lords side, that continuance of bloud is not necessarie, but yet there must be priuitie of succession time out of minde in one politicke body, for if that body be once dissolued, though a new be founded of the same name, & all the possessions be granted to them, yet the Homage Auncestrell is gone. But if a Prior and Couent be translated Concurrentibus his quæ in jure requiruntur to an Abbot and Couent, or to Deane & Chapter, there the Homage Ancestrell remaines, for though the name be changed, yet the body was neuer dissolued, but in effect it remaineth still. If the body Politique were founded within time of memorie, there cannot be Homage Ancestrell, for that continuance faileth, and though Ancestor is euer properly applied to a natural body, yet it is called Homage Ancestrell when the tenure is of a body Politique, for that it is Ancestrell of the Tenants side: but on the other side an Abbot or Prior cannot hold by Homage Ancestrell, for as appeareth by Littletons examples, it must euer be Ancestrell of the Tenants side. And where Littleton putteth his case of an Abbot or Prior, the same Law is of a Bishop, Deane, Archdeacon, Prebend, Parson, Vicar, and the like. Another thing here to be obserued is, that an Abbot or Prior cannot disclaime, &c. for regularly it is true, Quod meliorem conditionem Ecclesiæ suæ facere potest Prælatus, deteriorem nequaquam, and againe, Ecclesiæ suæ conditionem meliorem facere possunt

14.H.6.12. 2.H.6.9. 38.Ass.p.22.37. Ass.6. Lib.4.fol.73. &c. Deane and Chapter de Norwich case.

CEt est ascauoir, que en chescun cas ou le Seignior poit disclaimer en son Seigniorie p la Ley, & de ceo poit disclaim en Court de Record, son Seigniorie est extinct, & le Tenant tiendra del Seignior prochein Paramont le seignior que issint disclaime. Mes si vn Abbe ou Prior soit vouch per force de Homage Auncestrell, &c. comment que il ne vnque prist Homage, &c. vncore il ne poit disclaimer en tiel cas, ne en nul auter cas, car ils ne poient anienter ou deuester chose de fée que ad este vestue en lour meason.

AND it is to bee vnderstood, that in euerie case where the Lord may disclaime in his Seigniorie by the Law, and of this hee will disclaime in a Court of Record, his Seigniorie is extinct, and the Tenant shall hold of the Lord next Paramount, to the Lord which so disclaimeth. But if an Abbot or Prior bee vouched by force of Homage Auncestrell, &c. albeit that hee neuer tooke Homage, &c. yet hee cannot disclaime in this case, nor in any other case, for they cannot take away or deuest a thing in fee, which hath beene vested in their house.

poſſunt ſine conſenſu, deteriorem non poſſunt ſine conſenſu. And therefore an Abbot, Prior, Biſhop, Deane, Archdeacon, Prebend, Parſon, Vicar, or any other ſole Corporation that is ſeiſed in auter droit cannot diſclaime, becauſe as Littleton ſaith, they alone cannot deueſt any fee which is veſted in their Houſe or Church. For the Wiſdome of the Law would neuer truſt one ſole perſon with the diſpoſition of the Inheritance of his Houſe or Church. But an Abbot, and Prior had their Conuent, the Biſhop his Chapter, the Parſon and Vicar their Patron and Ordinarie, and the like of other ſole Corporations, without whoſe aſſent they could paſſe away no Inheritance. 40.E.3.27. 5.E.4.1. 6.E.3.51,52. 10.E.4.2.2. 21.H.7.20.

¶ *Ils ne poient anienter ou deueſter choſe de fee, &c.* Theſe generall words haue certaine exceptions, for in a quo warranto at the ſuit of the King againſt a Biſhop, Abbot, or Prior for Franchiſes and Liberties, if the Biſhop, Abbot, or Prior diſclaime in them, this ſhould binde their Succeſſors. If an Abbot or Prior had knowledged the Action in a Writ of Annuitie, this ſhould haue bound the Succeſſour, becauſe he cannot falſifie it in an higher action, and there muſt be an end of Suits, Expedit Reipublicæ vt ſit finis litium. But if the Abbot leuie a fine, or acknowledge the action in a Præcipe quod reddat, the Succeſſor ſhall be bound pro tempore, but he may haue a Writ of Right, and recouer the land. 6.E.3.51,52. 38.E.3.33. 16.E.3.tit.Abbot.13. 19.E.3.tit.Abbot.12. 7.R.2.Abbot.7. 12.H.4.11. 20.H.6.fo.vltimo. 4.H.7.2. 2.H.4.6. 34.Aſſ.p.7. 14.E.4.tit. Abbot.8. 8.E.3.28. 12.H.8.7.

¶ *Per force de Homage Anceſtrell, &c.* Here (&c.) implyeth or by any other warrantie (i) as by the reaſon which our Author here yeelds, appeareth. (i) 12.H.8.7.

¶ *Choſe de fee.* (k) For if in an Action of Debt vpon an obligation againſt an Abbot, the Abbot acknowledgeth the Action, and dieth, the Succeſſour ſhall not auoid Execution, though the Obligation was made without the aſſent of the Conuent, for he cannot falſifie the recouery in an higher Action: Et res iudicata pro veritate accipitur, and this is but a Chattell. And ſo it is of a Statute or Recogniſance, acknowledged by an Abbot or Prior. (k) 7.R.2.tit. Abbot.7. See the Bookes next aboue.

Sect. 147.

¶ Item ſi home q̄ tient ſon terre p̄ homage anceſtrel, alien a vn auter en fee, le alienée ferra Homage a ſon ſeignior, mes il ne tient de ſon Seigniour per homage Auncestrel, pur ceo q̄ le tenancie ne fuit continue en le ſanke de les auncеſters alienée, ne alienée nauera iames garrantie d̄ la terre d̄ ſon ſñr pur ceo que le continuance del tenancie en le tenant & a ſon ſanke per alienation eſt diſcontinue. Et ſic vide, que ſi le tenant que tient la terre per homage anceſtrell de ſon Seig-

ALſo if a Man which holds his land by Homage Anceſtrell, alien to another in fee, the alienee ſhall doe homage to his Lord, but he holdeth not of his Lord by homage anceſtrell, becauſe the Tenancie was not continued in the bloud of the Anceſtors of the alienee, neither ſhall the alienee haue warrantie of the Land of his Lord, becauſe the continuance of the tenancie in the Tenant, and to his bloud by the alienation is diſcontinued. And ſo ſee, that if the tenant which holdeth his Land of his Lord

¶ A *Lien a vn auter en fee.* For hereby the priuity of the eſtate is altered, and the continuance of it in the bloud of the Tenant is diſſolued. But if the Tenant maketh a Leaſe for life, or a gift in taile, this is a continuance of the priuity and eſtate in the Tenant in reſpect of the reuerſion that remaineth in him: for the fee, whereof Littleton here ſpeaketh was not out of him. But if the Tenant maketh a feoffment in fee vpon condition, and dieth, his heire performeth the condition, and reenterth, the Homage Anceſtrell is deſtroyed in reſpect of the interruption of the continuance of the priuitie and eſtate, and this caſe was put and not denied in the argument (m) of the caſe betweene the Lord Cromwell and Andrewes, Mich.14. & 15.Eliz. which I my ſelfe heard & obſerued. As if Ceſty & vie had made a feoffment in fee vpon condition and entred for the condition broken, he ſhould haue detained the Land againſt (m) 1.Mich.14. & 15. Eliz. 5.H.7.

gainst the Feoffees for euer, for that the estate and priuity was for the time taken out of the Feoffees, and thereby dissolued for euer. But if the Land were recouered against the tenant vpon a faint title, and the Tenant recouer the same againe in an action of higher nature, there the Homage Auncestrell remaines, for the right was a sufficient meane for the continuance: so it is if he had reuersed it in a Writ of Error. (n) If the alienee be impleaded in Littletons case, and vouch the alienor that held by Homage Auncestrell, albeit he commeth in by fiction of Law to many purposes in priuity of his former estate: Yet to this purpose hee cannot come in as Tenant by Homage Auncestrell, because of the discontinuance of the estate and priuity, and as Littleton saith, the Tenancie was not continued in the bloud. (o) and Britton saith, Et come aſcun nequedent ſoit Vouche per Homage, & le Seignior fende de auerrer que le tenement dount il vouche fuit translate hors del ſanke del primer purchaſer per feoffment ou per aſcun auter translation: en tiel caſe ſoit le tenant charger de voucher ſon feoffor ou ſes heires.

nior, alien en fée, coment que il repriſt eſtate de lalienée arrere en fée, il tient la terre p homage, mes nemy per Homage auncestrell.

by Homage auncestrell alieneth in fee, though he taketh an estate againe of the alienee in fee, yet hee holds the land by homage, but not by Homage auncestrell.

(n) 5.E.3.11. per Cantrel.

(o) Britton. fol. 170.a.

38.E.3.20. 11.H.4.22. 17.E.3.47. 59.73.74. 26.E.3.56. 18.E.3.56. 16.E.3. Voucher. 87. 18.E.3.30.44.E.3. Litt.fol.169.

¶ *Coment que il repriſt eſtate del alienee en fee, &c.* For the cause aforesaid in respect of the interruption of the priuity and continuance of the estate. And herewith agree our Bookes in Cases of Warranties in Deed, or Warranties in Law. See more of this in the Chapter of Warranties.

Sect. 148.

¶ *NE ferra homage al fitz:* If A. holdeth of B. as of the Manor of Dale, whereof B. is seised in taile. B. discontinueth the estate taile, and taketh backe an estate in Fee simple. A. doth homage to B. B. dieth seised, the issue in taile entreth, A. shall doe homage againe to the heire in taile of B. because he is remitted to the estate taile, and the state in fee that his father had; in respect whereof the homage is done is vanished, and the heire in taile is in of a new estate, in respect whereof hee ought to doe a new homage. (p) But regularly it is true

¶ Item il eſt dit, que ſi home tient la terre d'ſon Seignior per homage & fealty, & il ad fait homage & fealty a ſon Seignior, & le Seignior ad iſſue fits, & deuy, & le Seigniory diſcendiſt a le fits, en ceo cas le Tenant que fiſt homage al pere ne ferra homage al fits, pur ceo que quãt vn Tenant ad fait vn foits homage a ſon Seignior il eſt excuſe pur terme de ſa vie de faire homage a aſcun auter heire del Seignior, mes vncore il ferra Fealtie al fits & heire le Seignior, coment que il fiſt fealty a ſon Pere.

ALſo it is ſaid that if a man holds his Land of his Lord by Homage and Fealty, and hee hath done homage and fealty to his Lord, and the Lord hath iſſue a ſonne and dies, and the Seigniory diſcendeth to the ſonne, in this caſe the Tenant which did homage to the father, ſhall not doe homage to the ſonne, becauſe that when a Tenant hath once done homage to his Lord, he is excuſed for terme of his life to doe homage to any other heire of the Lord, but yet he ſhall doe fealty to the ſonne and heire of the Lord, although he did fealty to his father.

(p) Britton, 175, 176.

which Littleton saith, that when a Tenant hath done once homage to his Lord, he is excused for terme of his life to make homage to any other heires of the Lord. But he shall doe fealty to his sonne, albeit he hath done fealty to the father.

Sect.

Sect. 149.

¶ Item si le Sñr apres l'homage a luy fait per son tenant grant le seruice de son tenant per le fait a vn auter en fee, & le Tenant atturna, &c. donque le Tenant ne serra my compel de faire homage, mes il serra fealty, comẽt que il fist fealtie deuant a le grauntor. Car fealty est incident a chescun atturnemẽt del Tenant, quant le Seigniory est graũt. Mes si ascun home soit seisie dun mannor, & vn auter home tient de luy la terre come del mannor auãtdit per homage, le quel Tenant ad fait homage a son Sñr q̃ est seisie del mannor, si apres vn estrange port Præcipe quod reddat enuers le Sñr del mannor & recouera le mannor enuers luy, & suist execution, en cest case le tenant serra auterfoits homage a celuy q̃ recouera le manor coment que il fist homage deuant, p̃ ceo que lestat celuy que receiuoit le primer homage, est deseate per le recouery,

ALso if the Lord after the homage done vnto him by the Tenant, grant the seruice of his Tenant by Deed to another in fee, and the Tenant atturneth, &c. the Tenant shall not bee compelled to doe homage, but he shall do fealty, although he did fealty before to the Grantor. For fealty is incident to euery atturnment of the Tenant, when the Seigniorie is granted. But if any man be seised of a mannor, and another holds of him the Land as of the Manor aforesaid by Homage, which Tenant hath done homage to his Lord who is seised of the Manor, if afterwards a stranger bringeth a *Præcipe quod reddat* against the Lord of the Manor, and recouereth the Manor against him, and sues execution. In this case the tenant shall againe doe homage to him which recouered the Manor, although hee had done homage before, because the estate of him which receiued the first homage

¶ *Item si le Seignior, &c. grant le seruice de son Tenant per fait, &c.* Note a diuersity when the Lord alieneth the Seigniory, and when the tenant alieneth the tenancy, for when the Tenant hath done homage, and the Seigniory is transferred to another either by the act of the party as alienation, or by act in Law, as descent, yet the Tenant shall not iterat homage, as he shall doe fealty, but when the tenant doth homage, and alieneth the tenancie, there is a new Tenant, which neuer did homage, and therefore he ought to doe homage to the Lord albeit his Alienor had done it before. And it is to be obserued that none shall doe *homage but the Tenant of the Land to the Lords of whom it is holden, and therefore if homage be due to be done by the Tenant, if the Tenant alieneth the Land to another, the Alienor cannot be compelled to doe homage. Britton 176. 13.E.1.tit.Per quæ seruitia, 22. & tit. Gar. 91. *8.E.4 27.b.

¶ *Attorne, &c.* Here by (&c.) is to be vnderstood that albeit hee pay his rent, performe his annuall seruices, and doe fealty which is a part of homage, yet homage he shall not doe.

¶ *Mes si ascun home soit seisi dun mannor, &c.* Here it appeareth, that the case of the recouery of the Seigniory differeth from the alienation of the Lord, which is his owne act, or the descent of the seigniory to the heire, which is an Act in Law. And the reason of this diuersity is, for that by the recouery, the state of him that receiued the homage, is defeated, for it shall not lie in the mouth of the Tenant, to falsifie, or to frustrate or defeat the recouery which was against his Lord of the Manor or Seigniory, Vide Sect. 551. 33.E.3. Auowrie 255. 37.H.6.33. 39.H.6.34. 7.H.7.11. Doct. & Stud. fol. 45. 28.H.8. Dyer 41.

niory, for that the Tenant had nothing therein, and euery man by Law ought to meddle in such cases with that which belongeth vnto him, which is worthy of obseruation concerning falsifying of recoueries.

Note that to falsifie, in legall vnderstanding is to proue false, that is, to auoid, or as Littleton here saith, to defeat, in Latine falsare, seu falsificare, (i) falsum facere.

(i) 7. H. 8. cap. 4.

But since Littleton wrote, it is recited by Act of Parliament, That whereas diuers, &c. haue suffered recoueries against them of diuers Manors, &c. for the performance of their wills, for the suerty of their wiues ioyntures, &c. and the recouerors had no remedy to compell the Freeholders and Tenants, &c. to attourne vnto them, nor could by order of Law attaine to the rents, seruices, &c. that Act doth giue the recouerors power to distreine and auow, whereupon many haue thought, that this doth impugne Littletons case of the Recouery. But distinguendum est: Littleton intendeth his case either vpon a recouery by title, (for he saith, that the state of the Tenant in the recouery is defeated) or without any consent vpon pretence of title, which is all one, for the Tenant cannot falsifie, and the Lord should auow as one that came in of a former title. And Littleton hath good authority in Law to warrant (a) his opinion, and the Statute of 7 H. 8. extendeth to common recoueries had by consent and agreement, as appeareth by the Act it selfe, which then was, and yet is a common assurance and conueyance, whereof the Law taketh notice, and whereupon (as appeareth by the Act,) an vse might bee limited. So as it is apparent, that such recouerors came in meerely vnder the state of the Lord, &c. and had no remedy (as the Statute saith) to compell the Freeholders and Tenants to attourne, and without attournement, could neither distreine nor auow. Wherefore this statute gaue recouerors remedy to distreine, and a forme to auow and iustifie, which they had not before, as it appeareth by the Doctor and Student, who liued at that time: The body of the Act is, That such recouerors may distreine and make auowrie, &c. as those persons against whom the said recouery is, should haue done, &c. if the same recouery had not beene had, and haue like remedy, &c.

(a) 39. H. 6. 22. 37. H. 6. 38. 35. H. 6. 22.

28. H. 8. Dyer 41.

If a man had made a lease for yeeres to begin at Michaelmas, reseruing a rent, and before Michaelmas he had suffered a common recouery, the recoueror should distreine for that rent, which the Lessor before the recouery could not. But if the recouery had not beene had, then he might haue distreined, and so it is within the Statute: but if a fine had beene leuied of a Manor, and before attournment the conusee had suffered a common recouery, the recoueroy should not distreine, &c. because the Conusee against whom the recouery was had, could not.

But this Act extended only to Distresses and Auowries for Rents, Seruices, and Customes, and gaue also a forme of a Quare impedit. But vpon this Statute it was holden, That the recoueror could not haue an action of Debt against the Lessee for yeeres, nor an Action of Waste against Tenant for life or yeeres, and therefore remedy was prouided in these cases, by the Statute of 21. H. 8.

21. H. 8. cap. 15.

Sect. 150.

VIent a son Seigniour. The Tenant ought to seeke the Lord to do him homage, if the Lord be within England, for this seruice is personall aswell of the Lords side, as of the Tenants side, for Law requi-

ET ne gitra en le bouche le Tenant a fauer ou defeater le recouerie que fuit enuers son Seignior. Et sic vide diuersitatem en ceo case lou home vient a le Seignior per recouery, & lou il vient per discent ou per graunt al Seigniorie.

ITem si vn Tenant que doit per son Tenure faire a son Seignior Homage, vient a son Seignior, & dit a

is defeated by the recouery, and it shall not lye in the power of the tenant to falsifie or defeat the recouerie which was against his Lord. And so see a diuersitie in this case, where a man commeth to a Seigniorie by recouery, and where hee commeth to the same by discent or grant.

ALso if a Tenant which ought by his Tenure to doe his Lord Homage, commeth to his Lord, and saith vnto him, Sir, I

luy

Iuy, Sir, ieo doy a vous faire homage pur les Tenements que ieo teigne de vous, & ieo sue icy prist a vous faire homage pur meſmes les Tenements, pur que ieo vous pry, que ore ceo voiles receiuer de moy.

ought to doe homage vnto you for the Tenements which I hold of you, and I am here ready to doe homage to you for the ſame tenements, and therefore I pray you, that you would now receiue the ſame from mee.

reth order and decency. And therefore Bracton ſaith, Et ſciendum, Quod ille qui homagium ſuum facere debet, tentu reuerentiæ quam debet Domino ſuo, adire debet Dominum ſuum vbicunque inuentus fuerit in Regno, vel alibi ſi poſſit commodè adiri, & non tenetur Dominus quærere ſuum tenentem, & ſic debet homagium ei facere. And the ſame Law it is for Fealty, and the diuerſity betweene theſe ſeruices, and the rent is becauſe that theſe are perſonall, and the rent may be paid and receiued by other, and therefore a tender of the rent vpon the land is ſufficient.

Bracton fol. 80.2. And Britton fol. 172. agreeth herewith.

Sect. 151.

CEt ſi le Seignior adonques refuſa de ceo receiuer, donque apres tiel refuſall le Seigniour ne poet diſtreiner le Tenant pur le homage aderere deuant que le Seignior requiroit le Tenant de faire a luy homage, & l'Tenant a ceo faire refuſa.

AND if the Lord ſhall then refuſe to receiue this, then after ſuch refuſall the Lord cannot diſtreine the Tenant for the homage behinde, before the Lord requireth the Tenant to doe homage vnto him, and the Tenant refuſe to doe it.

CAnd the reaſon hereof is, for that when the Tenant hath done his endeuour and duty to offer his corporall ſeruice, and the Lord refuſeth the ſame, or doe not accept his ſeruice vpon his tender thereof, (which is a refuſall in Law) then the Law in reſpect of the Lords fault, requireth, that before the Lord can diſtreine for it, that hee doth require the tenant to doe that ſeruice, and if he either refuſe to doe it, or doe it not when he is required, it is a refuſall in Law.

Vide Bracton fo. 83. Britton 171.172. 21.E.3.24.21 Aſſ.p.73. 20.E.3. Auoury 223. 45.E.3.9.7.E.4.4. 21.E.4.17.20,H.6.32.

Sect. 152.

CItem home poit tener ſa terre per homage Auncestrel, & per Eſcuage, ou per auter ſeruice de Chiualer, auſibien ſicome il poyt tenir ſa terr per homage Ancestrel en Socage.

ALſo a man may hold his land by homage Auncestrell, and by Eſcuage, or by other Knights Seruice, as well as hee may hold his land by homage Auncestrell in Socage.

CSo as Homage Ancestrel may belong as well to a tenure by Eſcuage or knights ſeruice, as to a Tenure in Socage, or to a tenure in nature of ſocage, whereof there hath ſomewhat beene ſpoken in the chap. of Socage.

Chap. 8. Grand Serieantie. Sect. 153.

¶ *Tenure per grand Serieanty.* Serieanty cõmeth of the French word (Sergeant) i. Satelles, and (a) Serieantia idem est quod seruitium. And it is called Magna Serieantia, or Serianteria, *or Magnum seruitium, great seruice, as well in respect of the excellencie and greatnesse of the person to whom it is to be done, (for it is to be done to the King only) as of the honor of the seruice it selfe, and so Littleton himselfe in this section saith, that it is called magna serieantia, or Magnum seruitium, because it is greater and more worthy than Knights Seruice, for this is Regera seruitium regale, and not Militare only; Fleta saith, Magna autem serieantia dici poterit, cum quis ad eundum cum Rege in exercitu cum equo cooperto vel huiusmodi ad patriæ tuitionem fuerit feoffatus.

¶ *De nostre Seignior le Roy.* This Tenure hath seuen speciall properties. 1. To be holden of the King onely. 2. It must bee done when the Tenant is able in proper person. 3. This seruice is certaine and particular. 4. The reliefe due in respect of this Tenure differeth from Knights seruice. 5. It is to bee done within the Realme. 6. It is subiect to neither Aid pur faire fitz chiualeir, or file marier. And 7. it payeth no Escuage.

¶ *Come de porter le banner de nostre Seignior le Roy ou de amesner son host.* This great seruice to the King may (as it appeareth hereby) concerne the warres and matters mi-

(a) Glanvil lib. 9. ca. 4.
(b) Bracton lib. 2. 35. & 84. 85. lib. 1. cap. 10.
* Fleta lib. 1. cap. 10. lib. 2 cap. 9. in fine.
(c) Britton cap. 66. fol. 164. 165.
Ockam cap. quod non obstantes.

v. f. s. 161

45. Ed. 25. per Finchden. Fitz. ubi supra.

¶ Enure le graund serieantie est lou vn home tient ses terres ou tenemẽts de nostr Sẽr le Roy per tiels seruices que il doit en son propr person faire al Roy, come de porter le banner de nostre sẽr le Roy, ou sa lãce, ou de amesner son hoste, ou destre son marshal ou de porter son espee deuant luy a son corronement, ou destre s sewer a son corronement, ou son Caruer, ou son Butler, ou destre vn ô ses Chamberlains de le receit de son Eschequer, ou de faire auters tiels seruices, &c. Et la cause que tiel seruice est appell grand serieanty est, p ceo que il est pluis grand & pluis digne seruice que est le seruice en le tenure descuage. Car celuy q tyent p Escuage nest pas limite per sa Tenure de faire ascun pluis especial seruice que ascun auter que tyent p escuage doit faire. Mes celuy que

v: 107: a. 2.

Britton lib. 2. 84.
21. H. 4. 34.
10. H. 4. Assury 167.
P. H. 8. 83.
30. H. 6. ma. domino 11.

ms: v: 106: b.

23. H. 3. tit. Gard. fitz. de Ward. & relef. 21. E. 1.

Tenure by grand Serieantie is where a man holds his lands or tenements of our Soueraign Lord the King by such seruices as he ought to do in his proper person to the King, as to carry the bãner of the King, or his lance, or to lead his army, or to be his Marshall, or to carry his sword before him at his Coronation, or to bee his Sewer at his Coronation, or his Caruer, or his Butler, or to be one of his Chamberlaines of the receipt of his Exchequer, or to doe other like seruices, &c. And the cause why this seruice is called grand Serieanty is, for that it is a greater and more worthy seruice, than the seruice in the Tenure of Escuage. For he which holdeth by Escuage is not limited by his Tenure to doe any more especiall seruice, than any other which holdeth by Escuage ought to doe, but hee which holdeth by grand tyent

tient p grand Serieanty doit fait vn especial ſeruice al Roy, que il que tient per escuage ne doit faire.

Serianty ought to doe ſome ſpeciall ſeruice to the King, which he that holds by Eſcuage ought not to doe.

litary, for ſome Grand Seriantes are to bee done in the time of warre for the ſafety of the Realme, and ſome in time of peace, for the honour of the Realme.

¶ *Ou deſte ſon Marſhall.* *If the King giueth lands to a man to hold of him to be his Marſhall of his hoſt, or to be Marſhall of England, or to be Conſtable of England, or to be high Steward of England, *Chamberlaine of England and the like, theſe are grand Seriantes, and theſe and ſuch like grand Seriantes are of great and high iuriſdiction, and ſome of them concerne matters military in time of warre, and ſome ſeruices of honour in time of peace. And this is to be obſerued, that though there were diuers Lords Marſhals of England before the raigne of (z) R. 2. Yet King R. 2. created Thomas Mowbrey Duke of Norfolke, and firſt Earle Marſhall of England Per nomen comitis Mariſchalli Angliæ.

*Fleta lib. 1 cap. 19. 11. Eliz. Dier 285. Camden Brit. 286. 287. *Ockam cap. Officium conſtabularii.

(z) In rot. pat. cæ. de anno 20. R. 2.

¶ *Ou de porter ſon eſpee, &c. ou deſte ſon ſeiwer a ſon Coronement, &c.* Theſe and ſuch like grand Seriantes at the Kings Coronation are ſeruices of honour in time of peace.

¶ *Deſte vn de ſes Chamberlaines, &c. ou de faire autiels ſeruices.* It is alſo a Tenure by grand Serianty to hold (a) by any office to be done in perſon concerning the receipt of the Kings treaſure, Quia theſaurus regis reſpicit regem & regnum; And cenſus regius eſt anima Reip. ſo it is Firmamentum belli, & Ornamentum pacis.

(a) Vid. 51. H. 3. ſtatut. 5. 10. E. 3. c. 11. 14. E. 3. c. 14. 26. H. 8. ca. 2. 34. & 35. H. 8. c. 16. 11. E. 4. fo. 1. Pl. Com. 207. 208.

Milites camerarii dicuntur, quia pro camerariis miniſtrant, and concerning their office, this is the effect as Ockam (b) ſaith, Officium camerariorum in recepta conſiſtit in tribus, Scilicet, claues arcarum, &c. baiulant, pecuniam numeratam ponderant, & per centenas libras in forulas mittunt. But diſcontinuance in effect hath worne out their office. And yet they continue their name, and keepe the Key of the Treaſury where the Records doe lye.

(b) Ockam cap. qu d ſit Scaccarium. Geruaſius Tilburienſis in libro nigro ſub cuſtodia camerariorum.

And another ſaith, Camerarius dicitur à camera, quia camera eſt locus in quem theſaurus recolligitur, vel conclaue in quo pecunia reſeruatur. So as camerarius in legall ſignification eſt cuſtos regii cenſus: and Willielmus de Bellocampo comes Warwici (held) officium camerarii in Scaccario.

Rot. clauſ. 6. E. 1. membr. 1.

Or by any office concerning the adminiſtration of Iuſtice, quia indicia firmatur ſolium.

Ex lectura Marrowe.

It appeareth by an ancient Record (c) that Varianus de ſancto Petro tenuit de domino rege in capite medietatem ſeriantiæ pacis per ſeruicium inueniendi decem ſeruientes pacis ad cuſtodiendam pacem in Ceſtria.

(c) Ex inquiſitione poſt mortem Vriam de ſancto Petro, 4. E. 2. Ceſtr.

See Ockam of the inſtitution and ancient order of the Exchequer, Dier 4. Eliz. 213. the Vſhery of the Exchequer holden by grand Seriantry.

Vid. 7. Aſſ. 12. 7. E. 3. 57.

¶ *Tiels ſeruices, &c.* Here by (&c.) is to be vnderſtood other like ſeruices not expreſſed, as partly appeareth by that which hath beene ſaid, viz. to be Steward of England, Conſtable of England, Chamberlaine of England, and other honourable ſeruices, whereof more ſhall be ſaid in this chapter.

¶ *Ou vn eſpeciall ſeruice al roy.* That is to ſay, that this great ſeruice be ſpecially ſet downe, for it may conſiſt of diuers branches, as to goe with the King in his warre in the forward, and to returne in the rearward. And alſo to pay Rent, &c. but yet it muſt bee certaine and particular,

23. H. 3. grand. 147.

Sect. 154.

¶ Item ſi tenant que tient per Eſcuage mourſt ſon heire eſteant de pleine age, ſil tenoit per vn fee de chiualer, le heire ne paiera forſqz C. s. pur reliefe, come eſt ordeine per l'ſtatute de Magna Charta, cap. 2. Mes ſi celuy que tient de Roy per grand

ALſo if a Tenant which holds by Eſcuage dieth his heire being of full age, if hee holdeth by one Knights fee, the heire ſhall pay but a C. s. for reliefe, as is ordained by the ſtatute of *Magna Carta*, c. 2. But if he which holdeth of the King by grand Serieanty

ſeriantie

Serieantie mourt, son heir esteant de plein age, le heire paiera al Roy pur reliefe le value de les terres ou Tenements per an (ouster les charges & repryses) queux il tient del Roy per grand Serieantie. Et est ascauoir, que Serieantia en Latin, idem est quod seruitium, & sic Magna Serieantia, idem est quod magnum seruitium.

dieth, his heire being of full age, the heire shall pay to the King for reliefe one yeeres value of the lands or tenements which he holdeth of the King by Grand Serieanty ouer and besides all charges and repriſes. And it is to be vnderstood, that *Serieantia* in Latine, is the same *quod seruitium*, and so *Magna Serieantia* is the same *quod magnum seruitium*.

11.H.4.72.b. ¶ *Aiera al Roy pur reliefe le value de ses terres, &c.* And herewith agreeth 11.H.4.72.b.

¶ *Serieantia idem est quod seruitium.* Hereby it appeareth that the explanation of ancient words and the true sense of them are requisite, and to be vnderstood per verba notiora.

Sect. 155.

¶ *Tenants per escuage doient faire lour seruice hors del Roialme.*

F.N.B. 83.E. For he that holdeth by Cornage or Castle-gard holdeth by Knights seruice, and is to doe his Seruice within the Realme, but her holdeth not by escuage, and therefore Littleton materially said Tenant per Escuage, and not tenant by Knights seruice.

¶ Item ceux que teignont per escuage doient faire lour seruice hors de roialme, mez ceux que teignont p grand Serieantie, pur le greindr part doient faire lour seruices deins le Roialme.

ALso they which hold by Escuage, ought to doe their Seruice out of the Realme, but they which hold by Grand Serieantie (for the most part) ought to do their seruices within the Realme.

¶ *Pur le greinder part.* For to beare the Kings Banner, or his Lance, or to lead his Host, and to be his Marshall, &c. may be as well without the Realme, and therefore Littleton said (for the greatest part.)

Sect. 156.

4.H.5.cap.7. 22.E.4.cap.8. Camden in Britannia.

¶ *En l'marches de Scotland.* Marches is either a Saxon word and signifieth, limites, bourdours, or an English word, viz. Markes. Nota, for that it lyeth neere to Scotland, it is said in the Marches of Scotland, and yet the Land

¶ Item il est dit, que en le Marches de Scotland, ascuns teignont de Roy per Cornage, cestascauoir, pur bentier vn cornu, pur garner homes de pais quant ils oyent que le Scottes, ou auters enemies veignont ou voilent enter en Engleterre, quel seruice est

ALso it is said that in the Marches of Scotland some hold of the King by Cornage, that is to say, to winde a horne to giue men of the Country warning when they heare that the Scots or other enemies are come or will enter into England, which seruice is grand Serieanty.

graund

graund Serieanty. Mes ſi aſcun tenant tient daſcun auter Seignior que de Roy per tiel ſeruice de Cornage, ceo neſt pas grand Serieanty, mes eſt ſeruice de Chiualer, & trait a luy garde & marriage, car nul poit tener per grand Serieanty ſi non de Roy tantſolemẽt.

But if any tenant hold of any other Lord than of the King by ſuch ſeruice of Cornage, this is not grand Serieanty, but it is Knights Seruice. And it draweth to it Ward and Marriage, for none may hold by grand Serieanty, but of the King only.

whereof Littleton here ſpeaketh, lieth in England.

¶ *Per Cornage.* Cornagium is deriued (as cornuare alſo is) à cornu, and is as much (as before hath beene noted) as the ſeruice of the Horne. It is alſo called in old bookes Horngeld.

Note a Tenure by Cornage of a commõ perſon is knights Seruice, of the King it is grand Serieanty, ſo as the Royall dignity of the perſon of the Lord maketh the difference of the Tenure in this caſe. And I finde that there were Cornicularii amongſt the Romans, & dicti fuerunt cornicularii quia cornu faciebant excubias militares, and Magna Serieantia is appropriated only to this Tenure.

23.H. tit. gard. 148. 8.E.3.66. in fine. 16.E.3. auowrie 90. F.N.B. 83.

Sect. 157.

¶ Item home poit veier Anno 11. H. 4. que Cokayne adonque chiefe Baron deſchequer, vient en le common banke, portant ouesques luy la Copy dun recorde in hæc verba; Talis tenet tantam terram de domino rege per Serieantiam, ad inueniendum vnum hominem ad guerram vbicunq; infra quatuor Maria, &c. Et il demaunda ſil fuit graund Serieanty ou petite ſerieantie. Et Hanke, adonques diſoit, que il fuit graunde Serieantie, pur ceo que il ad ſeruice a faire p corps dun home, & ſil ne purra trouer nul home a faire l'ſeruice pur luy, il meſme doit faire. Quod alii

ALſo a man may ſee in *Anno* 11. *H.* 4. that *Cokayne* then Chiefe Baron of the Exchequer came into the Common Place, and brought with him the Copy of a Record in theſe words; *Talis tenet tantam terram de Domino Rege per Serieantiam ad inueniendum vnum hominem ad guerram vbicunque infra quatuor Maria, &c.* And he demanded if this were Grand Serieanty, or petit Serieanty. And *Hanke* then ſaid, that it was grand Serieanty, becauſe hee had a ſeruice to doe by the body of a man, and if he cannot find a man to doe the ſeruice for him, hee himſelfe ought to doe it. *Quod alii Iuſticiarii conceſſe-*

¶ *Et ſil ne purra trouer nul home a faire le ſeruice pur luy, &c.* Hereby it appeares that Tenant by Grand Serieanty, may in ſome Caſes make a Deputy, and therefore the diuerſity is, that where the Grand Serieanty is to bee done to the Royall perſon of the King, or to execute one of thoſe high and great Offices, there his tenant cannot make a deputy without the Kings licence, and therefore Littleton hath ſaid before that ſuch ſeruices are to be done in proper perſon. But he that holdeth to ſerue him in his war within the Realme or by Cornage may make a Deputy.

11.H. 4. 72. 24.E. 3. 31. Vid. Hill. 8. E. 1. Middle inter Placita de Banco. Sir Iohn Moyſe Caſe.

Sect. 153

11.H. 4. 72.

(*) Iohannes de Archier qui tenet de Domino Rege in capite per Seriantiam archerie, &c. in Comitatu Glouc. hæres in cuſtodia.

(*) Clauſ. 18.H. 3.M. 5.

¶ *Infra quatuor Maria.* That is within the Kingdome of England, and the Dominions of the ſame Kingdome.

Rot. Eſcheator. 41.H. 3. nu. 28. Stephen Haringdons caſe.

Now it is good to be ſeene what perſons that hold by Grand Serieanty may doe and performe that honorable ſeruice in Perſon, and who ought not to be receiued thereunto,

v. 29. 61.

unto, but ought to make a ſufficient Deputy. At the Coronation of (a) King R. 2. John Wilſhire Citizen of London exhibited his Petition to the high Steward of England in his Court, that where the ſaid Iohn held certaine lands in Hayden in the County of Eſſex, of the King by Grand Seriantie, viz. to hold a Towell when the King ſhould waſh his hands before dinner the day of his Coronation, &c. and prayed that he might be accepted to doe this office of Grand Seriantie, the iudgement followeth. Et quia apparet per record' de Scaccario Domini Regis in Curia monſtrat' quod prædicta tenementa tenentur de Domino Rege per ſeruitium prædictum. Ideo dictus Iohannes admittitur ad ſeruitium ſuum huiuſmodi faciendum per Edmundum Comitem Cantabrigiæ deputatum ſuum, & ſic idem Comes in iure ipſius Iohannis Manutergium tenuit quando Dominus Rex lauabat manus ſuas dicto die Coronationis ſuæ ante prandium.

(a) 1. R. 2. Rot. clauſ. m. 45.

v. Spied Cron: 603. b, &

Iuſticiarii conceſſerunt. (Cokaine) Donque doit le tenant en ceo cas paier relefe al value del terre per an? Ad quod non fuit reſponſum.

runt. Then ſaith *Cokaine*, ought the Tenant to pay reliefe to the value of the Land by the yeere? *Ad quod non fuit reſponſum.*

By which Record it appeareth that the ſaid Iohn Wilſhire being of his quality, and having not any dignity, could not doe and performe this high and honourable ſeruice to the Royall perſon of the King, but did make an honourable Deputy who performed it in his right, which is worthy of obſeruation.

Vide 1. R. 2. memb. 45.

At the ſame Coronation William Furneuall exhibited his Petition in the ſame Court, that where he held the Manor of Farnham, in the County of Buck, with the Hamlet of Cere in the ſame County, by the ſeruice to finde to the King at his Coronation a Glone for his right hand, and to ſupport the Kings right hand the ſame day, while he held in his hand the berge Royall, the iudgement followeth. Qua quidem Petitione debite intellecta, & facta publica proclamatione ſi quis clameo ipſius Willielmi in ea parte contradicere vellet, nemineque ei contrariante, conſideratum fuit, quod idem Willielmus aſſumpto per eum primitus ordine militari, ad ſeruitium prædictum admitteretur faciendum, & poſtmodo (videlicet) die Martis proximo ante Coronationem prædictam Dominus Rex ipſum Willielmum apud Kenington honorifice præfecit in militem, & ſic idem Willielmus ſeruitium ſuum prædictum, dicto die Coronationis iuxta conſiderationem prædictam perfecit & in omnibus adimpleuit. By which it appeareth, that a Knight is of that dignity, that he may performe this high and honourable ſeruice in his owne perſon, and although this William Furneuall was deſcended of an honourable family, yet before he was created Knight he could not performe it.

And Sir Iohn de Argentine Chiualier performed the ſeruice of Grand Seriantie, to be the Kings Cup-bearer at the ſame Coronation.

(m) Vide 1. R. 2. m. 45.

(m) Anne, which was the wife of Sir Iohn Haſtings Earle of Pembroke who held the Manor of Aſhley in Norfolke of the King by Grand Seriantie, viz. to performe the Office of the Napery at his Coronation, was adiudged to make a Deputy, becauſe a woman cannot doe it in perſon, and thereupon ſhee deputed Sir Thomas Brount Knight, who performed the ſame in her right. Iohn ſonne and heire of Iohn Haſtings Earle of Pembroke, exhibited in the ſame Court his Petition, ſhewing that by his tenure he was to carry the great Spurres of Gold before the King at his Coronation, &c. The iudgement is, Audita & intellecta billa prædicta, pro eo quod dictus Iohannes eſt infra ætatem, & in cuſtodia Domini Regis, quanquam ſufficienter oſtenditur per recorda, & euidentias, quod ipſe ſeruitium prædictum facere deberet. Conſideratum extitit, quod eſſet ad voluntatem Regis, quis dictum ſeruitium iſta vice in iure ipſius Iohannis faceret, & ſuper hoc Dominus Rex aſſignauit Edmundum Comitem Marchiæ ad deferendum dicto die Coronationis prædicta calcaria in iure præfati hæredis, ſaluo iure alterius cuiuſcunque. Et ſic idem Comes Marchiæ Calcaria illa prædicto die Coronationis coram ipſo Domino Rege deferebat.

Vide 1. R. 2. m. 45.

By which it appeareth, that the heire before he hath accompliſhed his age of one and twenty yeeres, cannot performe this great and honourable ſeruice, but during his minority the King ſhall appoint one to performe the ſeruice.

Sect. 158.

46. E. 3. 15. 2. per Finchden.

THere Littleton ſaith that he that holds by Grand Seriantie, doth hold by Knights

ET nota que touts que teignont de Roy p grand

AND note that all which hold of the King by Grand Ser-

Serieanty, teignont de Roy per ſeruice de Chiualrie, & le Roy p̄ ceo auera garde, mariage, & reliefe, mes le Roy nauera de eux Eſcuage, ſils ne teignont de luy per Eſcuage, vid Mad. Hist of Exch. 452.

Seriantry, hold of the King by Knights ſeruice, and the King for this ſhall haue Ward, Marriage and Reliefe, but he ſhall not haue of them Eſcuage, vnleſſe they hold of him by Eſcuage.

Seruice which is ſo ſaid of the effects. And therefore Littleton wth adds that the King ſhall haue Ward, Marriage, and Reliefe, which are the effects of Knights ſeruice, &c.

Sometimes in ancient records, Seruitium Militare, is called Seruitium Hauberticum, or Seruitium Brigandinum, or Seruitium Loricatum. And a Haubert or Brigandine ſignifieth a Coat of Male.

CHAP. 9. *Petit Serieantie.* Sect. 159.

TEnure p petit ſerieanty eſt lou home tient ſa t̄re d̄ noſtre Sñr l' Roy, d̄ render al Roy annualm̄t vn arke, ou vn eſpee, ou vn dagger, ou vn cuttel, ou vn launce, ou vn paire de Gants de ferre, ou vn paire de Spoures doze, ou vn ſete, ou diuers ſetes, ou de render autꝭ tiels petit choſes touchants le guerre.

TEnure by petit Seriãty is where a man holds his Land of our Soueraigne Lord the King, to yeeld to him yeerely a Bow, or a Sword, or a dagger, or a knife, or a Lance, or a paire of Gloues of maile, or a paire of gilt Spurs, or an Arrow, or diuers Arrowes, or to yeeld ſuch other ſmall things belonging to warre.

DE noſtre Seignior le Roy. And ſo Littleton concludeth this Chapter, that a man cannot hold by grand Serieanty or petit Serieanty, but of the King, and of the King as of his perſon, and not of any Honour or Manor. And it is to be obſerued that regularly a tenure of the King as of his perſon is a Tenure in Capite, ſo called κατ' ἐξοχὴν propter excellentiam, becauſe the head is the principall part of the body, and he that holdeth of any common perſon as of his perſon, he in truth holdeth in capite, but againe, κατ' ἐξοχὴν it is only in common vnderſtanding applied to the King, and that Seigniory of a common perſon is called a Tenure in groſſe, that is by it ſelfe, and not linked, or tied to any Manor, &c.

Britton fol. 164. Bracton lib. 2. fol. 35. Fleta lib. 2. cap. 9. Ockam cap. quid de auibus oblatis.

And this Tenure of the King in Capite, is ſaid (a) to be a Tenure of the King as of his Crowne, that is, as he is King. (b) And therefore if one holdeth land of a common perſon in groſſe as of his perſon, and not of any Manor, &c. and this Seigniory eſcheateth to the King (yea though it be by attainder of treaſon) he holdeth of the perſon of the King, and not in Capite, becauſe the originall Tenure was not created by the King. And therefore it is directly ſaid, that a Tenure of the King in Capite is when the land is not holden of the King as of any Honor, Caſtle, or Manor, &c. But when the Land is holden of the King as of his Crowne.

(a) Bracton lib. 2. fol. 37.
(b) 3. E. 3. tenures. B. 94. 30. H. 8. 43. 28. H. 8. Liuery. B. 57. 29. H. 8. ibid. 58. 6. H. 8. Dier. 58. Vide Leſtatute de 1. E. 6. cap. 4. F. N. B. 5. K.

Note that an Honor is the moſt noble Seigniory of all others, and originally created by the King, but may afterward be granted to others. See for the creation of an Honor, 13. H. 8. cap. 1. 33 H. 8 cap. 37 38. 37. H. 8. cap. 18.

And it is to be obſerued that a man may hold of the King in Capite, or of his Crowne as well in Socage as by Knights ſeruice.

¶ *De render al Roy annualment vn arke, ou vn eſpee, &c.* As grand Serieanty muſt be done by the body of a man, ſo petit Serieanty hath nothing to doe with the body of a man, but to render ſome things touching warre, as a bow, a ſword, a dagger, a knife, a lance, a paire of gantlets of iron, or ſhafts and ſuch like.

Magna Chart. cap. 27.

It is to be obſerued that grand Serieanty or Knights ſeruice is not in law called Liberum ſeruitium, as Socage is, but per feodum vnius militis, &c. but to finde the King ſo many ſhips for

Regiſt. fo. 2. F. N. B. fo. 2.

for his paſſage is called liberum ſeruitium, and therefore it is ſaid, Per liberum ſeruitium ad inueniendum nobis quinque naues ad tranſitum noſtrum ad mandatum noſtrum. And therefore clearly ſuch a Tenure is neither Grand Serieanty, nor Knights Seruice, becauſe nothing is to be done by the body of any man, nor in that caſe, touching warre, but Ships to be found. And this is the reaſon that Littleton yeeldeth of the examples he doth here put, becauſe that ſuch a Tenant by his Tenure ought not to goe, nor to doe any thing in his perſon, touching warre. And herewith agreeth Bracton, Ex paruis Serieantiis quæ non reſpiciunt Regem, nec Patriæ defenſionem nullam competere debet maritagium nec cuſtodiam, &c.

Bract. li.2. fo.35.

9.H.3. Gard.145.

If a man holdeth land of the King, to finde an horſe of ſuch a price, and a ſaddle, and a bridle by forty dayes, or any other time when the King goeth with his army againſt Wales, this is Petit Serieanty, and no Grand Serieanty for the cauſe aforeſaid.

Sect. 160.

Tiel ſeruice neſt forſque Socage, &c.

But as it hath been ſaid, the dignity of the perſon of the King giueth the name of Petit Serieanty, which in caſe of a common perſon ſhould bee called plaine ſocage ab effectu: for it ſhal haue ſuch effects or incidents as belong to Socage, and neither ward nor marriage, &c. for they belong to Knights ſeruice.

9.H. 3. Gard.145.

Of this tenure the great Charter in the perſon of the King ſaith thus, Nos non habebimus cuſtodiam hæredis, &c. occaſione alicuius paruæ Serieantiæ quam tenet de nobis per ſeruitium reddendo nobis cultellos, ſagittas, &c.

Mag. Chart. ca.28. Vid. Stat. de Wardis & Releuis, 28.E.1.

CEt tiel ſeruice ne forſq; Socage en effect, pur ceo que tiel Tenant per ſon Tenure ne doit aler ne fayre aſcun choſe en ſon proper perſon, touchant le guerre, mes de render & payer annualment certaine choſes al Roy, ſicome home doit payer vn Rent.

And ſuch ſeruice is but Socage in effect, becauſe that ſuch Tenant by his Tenure ought not to goe nor doe any thing in his proper perſon touching the warre, but to render and pay yeerly certaine things to the King, as a man ought to pay a Rent.

Sect. 161.

Vide Sect. 1.

Of this ſufficient hath beene ſaid before, ſauing that parua Serieantia is onely appropriate to this Tenure.

CEt nota que home ne poit tener per graund Serieantie, ne per petit Serieanty, ſi non de Roy, &c.

And note that a man cannot hold by grand Serieanty, nor by petit Serieanty, but of the King, &c.

Chap. 10. *Tenure en Burgage.* Sect.162.

Burgage, In Latine Burgagium, is deriued of this word Burgus, which is Vicus, Pagus, or Villa, a Towne, and it is called a Burgh, becauſe it ſendeth Burgeſſes to Parliament.

Bracton lib.3.Tract.2. Britton fol.164. Mirror cap.2. Sect.18. Lib.10.fol.123,124. The Maior of Lynns caſe. 40.Aſſ.p.27. 43.E.3.3:. 21.E.4.53. & 54. 21.H.7.15. 2.E.3.cap.3.

CTenure en burgage eſt lou Antient Burgh eſt, ou que le Roy e Seignior, e

CTenure in Burgage is where an ancient Burrough is, of which the King is lord

Of Burghs ſome be incorporate, and ſome not, and ſome be walled, and ſome not, (b) It

(b) Bracton lib.3.fo.124. Fleta lib.1.cap.47.

ceits

ceur que ont Tenements deins le Burgh teignont del Roy lour Tenemẽts que cheſcun Tenant pur ſon Tenement doit payer al Roy vn certain Rent per an, &c. Et tiel Tenure nell foꝛſque Tenure en Socage.

and they that haue tenements within the Burrough, hold of the King their tenements, and euerie Tenant for his Tenement ought to pay to the King a certaine rent by yeare, &c. and ſuch Tenure is but Tenure in Socage.

was in foꝛmer times taken foꝛ thoſe Companies of ten families, which were one anothers pledge, and thereforе a pledge in the Saxon tongue a Borhoe, whereof (ſome take it) that a Burgh came, whereof alſo commeth Headboꝛough oꝛ Boꝛowhead, Capitalis Plegius, a Chiefe Pledge, viz. the Chiefe man of the Boꝛhoe, whom Bracton calleth Firthburgus, and hereof alſo commeth Burghbote, which as Fleta ſaith, ſignifieth Quietanciam reparationis murorum Ciuitatis aut Burgi.

Euerie Citie is a Burgh, but euerie Burgh is not a Citie, whereof moꝛe ſhall be ſaid hereafter. And the termination of this woꝛd Burgagium, (as befoꝛe hath beene noted) ſignifieth the ſeruice whereby the Burgh is holden. And of this woꝛd (Burgh) two ancient and noble Families take their names, viz. de Burgo, and de Burgo caro, Burchier. 86. a'.

¶ *Deque le Royeſt Seignior.* But it may be holden of another, as by that which immediately followeth appeareth. F.N.B.64.d.

Sect. 163.

¶ ET meſme le maner eſt, lou vn auter Seignioꝛ Eſperitual ou Temporall, eſt ſeignioꝛ de tiel Burgh, & les Tenants de Tenements en tiel Burgh teignont de lour Seignioꝛ a payer cheſcun de eux vn annual Rent.

AND the ſame manner is, where another Lord Spirituall or Temporall is Lord of ſuch a Burrough, and the tenants of the tenements in ſuch a Burrough hold of their Lord, to pay each of them yearely an annuall Rent.

¶ This is euident, & needeth no explanation, only this by the way is to bee obſerued, that Biſhops being Lords of Parliament, haue not beene called Lords Spirituall ſo lately, as ſome haue imagined. 16.R.2.ca.5. 1.H.4.ca.2.&c.

Sect. 164.

¶ ET eſt appel tenur ẽ burgage, pur ceo que les tenements deins l' burgh ſont tenus del Seignioꝛ del Burgh p certaine rent, &c. Et eſt aſcauoir q̃ les antient villes appel

AND it is called Tenure in Burgage, for that the tenements within the Burrough bee holden of the Lord of the Burrough by certaine rent, &c. And it is to wit that the ancient Townes called Burroughes, bee

¶ *Per certaine rent, &c.* By (&c.) here is implyed fealtie, oꝛ other ſeruice, as to repaire the houſe of the Lord, &c.

¶ *Les antient villes appel Burghes.*

So as a Burgh is an ancient Towne holden of the King oꝛ any other Lord which ſendeth burgeſſes to the Parliament.

And it is to be obſerued, that Burgh and Burie haue all one ſignification, as Canterburie, Burie Saint Edmond, Sudburie, Salisburie, Banburie, Heytesburie, Malmesburie, Shaftesburie, Teukesburie,

Teukesburie, and others ſend Burgeſſes to the Parliament, Vide pro Villis, Parochiis & Hamlettis poſtea, Sect. 171.

Burghs ſont les pluis ancient vills q̄ ſont deins Engleterre, car ceux villes q̄ oze ſont cities, ou counties, en ancient temps fueront burghes, & appelles burghes, car ō tiels ancient villes, appelles Burghes, veignont les Burgeſſes al Parliamt, quant le Roy ad ſummon ſon Parliamt.

the moſt anciēt towns that bee within England, for the Townes that now bee Cities or Counties, in old time were Boroughes, and called Boroughes, for of ſuch old Townes called Boroughs, come the Burgeſſes of the Parliament, to the Parliament, when the King hath ſummoned his Parliament.

¶ *Cities.* Cinitas, whereof commeth the word Citie. A Citie is a Borough incorporate, which hath, or haue had a Biſhop: and though the Biſhopricke bee diſſolued, yet the Citie remaineth.

Lamb. fol. 125. In the time of William the Conquerour it is declared in theſe words, Item nullum mercatum, vel forum ſit, nec fieri permittatur niſi in ciuitatibus regni noſtri, & in Burgis clauſis & muro vallatis & caſtellis, & locis tutiſſimis, vbi conſuetudines regni noſtri, & jus noſtrum commune, & dignitates coronæ noſtræ quæ conſtitutæ ſunt à bonis prædeceſſoribus noſtris depetire non poſſunt, nec defraudari, nec violari, ſed omnia rite, & per judicium & juſtitiam fieri debent: & ideo caſtella & burgi & ciuitates ſunt & fundatæ & ædificatæ ſcilicet ad tuitionem gentium, & populorum regni, & ad defenſionem regni, & idcirco obſeruari debent cum omni libertate, & integritate, & ratione. So as by this it appeareth that Cities were inſtituted for three purpoſes: Firſt, Ad conſuetudines regni noſtri; & jus noſtrum commune & dignitates coronæ noſtræ conſeruand'. 2. Ad tuitionem gentium & populorum regni. And thirdly, Ad defenſionem regni. For conſeruation of Lawes, whereby euerie man enioyeth his owne in peace: for tuition and defence of the Kings ſubiects, and for keeping the Kings peace in time of ſudden byroyes. And laſtly, for defence of the Realme againſt outward or inward hoſtilitie.

Mirror cap. 2. ſect. 18. Britton fol. 87. Ciuitas & vrbs in hoc differunt, quod incolæ dicuntur ciuitas, vrbs verò complectitur ædificia, but with vs the one is commonly taken for the other. Villeins ſont coultiuers de fiefe demurrants in villages vpland, car de ville eſt dit villeine, & de Boroughs Burgeſſes, & de citie, citizens.

Mich. 7. R. 1. Rot. 1. (which was in Anno Dom. 1195) in an Aſſ. of Darreine preſentment for the Church of St. Peters in Cambridge. Euerie Borough incorporate that had a Biſhop within time of memorie is a Citie, albeit the Biſhopricke be diſſolued, as Weſtminſter had of late a Biſhop, & therefore it yet remaines a Citie. The Burgh of Cambridge, an ancient Citie, as it appeareth by a iudiciall Record (which is to be preferred before all others) where Mos ciuitatis Cantabrigiæ is found by the oath of 12. men the recognitors of that aſſiſe, which (omitting many others) I thought good to mention, in remembrance of my loue and dutie Almæ Matri Academiæ Cantabrigiæ.

There be within England two Archbiſhoprickes, and 23. other Biſhoprickes, therefore ſo many Cities there be, and Cambridge and Weſtminſter being added, there are in all 27. Cities within this Realme, and may be more, than at this time I can call to memorie.

It is not neceſſarie that a Citie be a Countie of it ſelfe, as Cambridge, Ely, Weſtminſter, &c. are Cities, but are no Counties of themſelues, but are part of the Counties where they be.

¶ *Counties.* Or Shires, the one taken from the French, the other from the Saxon, in Latine Comitatus. Counties are certaine circuits or parts of the Kingdome into the which the whole Realme was diuided for the better gouernment thereof, ſo as there is no land, but it is within ſome Countie. And euerie of them is gouerned by a peereiy Officer which we call a Shireue. Which name is compounded of theſe two Saxon words Shire and reue, (i) Præpoſitus, or Præfectus comitatus; but hereof more hereafter in his proper place ſhall be ſpoken. There be in England 41. Counties, and in Wales twelue.

Lib. 10. fo. 123. 124. Vid. Deuant ſect. 97. ¶ *Veignont les Burgeſſes al Parliament, &c.* Parliament is the higheſt & moſt honourable and abſolute Court of Juſtice of England conſiſting of the King, the Lords of Parliament, and the Commons. And againe, the Lords are here diuided into two ſorts, viz. Spirituall and Temporall. And Commons are diuided into three parts, viz. into Knights of Shires or Counties, Citizens out of Cities, and Burgeſſes out of Boroughs. The words of the Writ to the Sherife for the election being, Duos milites gladiis cinctos magis idoneos, & diſcretos comitatus tui, & de qualibet ciuitate comitatus tui duos ciues, & de quolibet

quolibet Burgo duos Burgenſes de diſcretioribus,& magis ſufficientibus,&c. All which haue voices and ſuffrages in Parliament: You ſhall read in the Parliament Rolls, that (as hath bene ſaid) there is Lex & conſuetudo Parliamenti, quæ quidem lex quærenda eſt ab omnibus, ignorata à multis, & cognita à paucis. Of the members of this Court ſome be by deſcent, as antient Noblemen, ſome by creation, as Nobles newly created, ſome by ſucceſſion, as Biſhops, ſome by election, as Knights, Citizens, and Burgeſſes. Vide ſect. 3.

It is called Parliament,becauſe euerie member of that Court ſhould ſincerely and diſcretly Parler la ment for the generall good of the Common-wealth. Which name it hath alſo in Scotland, and this name before the Conqueſt was vſed in (a) the time of Edward the Confeſſor, William the Conqueror,&c. It was anciently before the Conqueſt called Michel Sinoth, Michel gemote, Ealſa Witenage mote, that is to ſay, the great Court or Meeting of the King, and of all the Wiſemen, ſometime of the King with the counſell of his Biſhops, Nobles, and wiſeſt of the people. This Court the Frenchman calleth Les Eſtates, or Aſſemble des Eſtates. In Germany it is called a Diet: for thoſe other Courts in France that are called Parliaments, they are but ordinarie Courts of Juſtice, and (as Paulus Iouius affirmeth) were firſt eſtabliſhed by vs. 4.H.8.cap.8. (a) Treatiſe de modo tenend. Parliam. 22.E.3. fo.60.a. Iohannes de Rupicella tempore regis Iohannis. Pol. Virgil. li.3 tempore H.1 W.1. 3 E.1. in the title.

The King of England is armed with diuers Councels, one whereof is called Commune Concilium, and that is the Court of Parliament, and ſo it is legally called in Writs and iudiciall proceedings, Commune Concilium Regni Angliæ. And another is called (b) Magnum Concilium: this is ſometime applyed to the vpper houſe of Parliament,and ſometime out of Parliament time to the Peeres of the Realme, Lords of Parliament, who are called Magnum Concilium Regis, for the proofe whereof take one (c) Record for many in the fifth yeare of King H.4. at what time there was an exchange made betweene the King and the Earle of Northumberland, whereby the King promiſeth to deliuer to the Earle lands to the value, &c. Per aduice & aſſent des eſtates de ſon Realme & de ſon Parliament (parenſi que Parliament ſoit deuant le feaſt de St. Lucy) ou auterment per aduice de ſon graund Councell, & auters Eſtates de ſon Realme, que le Roy ferra aſſembler deuant le dit feaſt, in caſe que le Parliament ne ſoit. And herewith agreeth the Act of Parliament in 37. E. 3. cap. 18 where it is ſaid, before the Chancellour, Treaſurer, and great Councell. Thirdly (as euerie man knoweth) the King hath a Priuie Councell for matters of State, (as for example) (d) Henricus de bello monte Baro de magno & de priuato concilio regis juratus: and many others before and after. The fourth Councell of the King are his Judges of the Law for Law matters, and this appeareth frequently in our (e) Bookes, and muſt be intended, when it is ſpoken generally by the Councell it is to be vnderſtood Secundum ſubiectam materiam; for example, if it be legall, then by the Kings Councell of the Law, viz. his Judges. (b) Bracton lib. 1. cap. 8, Regiſt. 280. (c) 27. Aug. 5. H. 4. (d) In Dorſ. Clauſ. 16.E.2.M 5.

Now for the antiquitie of this high Court of Parliament, whereof Littleton here ſpeaketh; It appeareth that diuers Parliaments haue beene holden long before and vntill the time of the Conqueror, which be in Print, and many more appearing in ancient Records and Manuſcripts. (f) Le Roy Alfred aſſembler' les Counties, &c. & ordeina pur vſage perpetual que deux foitz per an ou pluis ſouent pur miſter in temps de peace ſe aſſemblerent a Londres a Parlementer ſur le guidament del people de Dieu, & coment ſoy garderent de pecher, viueront en quiet, & receiueront droit per vſages & ſanits judgements per ceſte eſtate ſe fieront pluſors ordinances per pluſors Roys ieſque a temps le Roy que ore eſt, que fuit le Roy E. 1. The concluſion of that great Parliament holden by King Athelſtan at Grately is verie remarkable, which I haue ſeen in theſe words: All this was enacted in that great Synod or Councell at Grately, where at was the Archbiſhop Wolfchelme, with all the Noblemen and wiſe men which King Athelſtan called together. W.1 ca 1. Laſtat. de templar. 16 R. 2. ſtat. de Præmunire. See the ſame publiſhed by Mr. Lambert. (f) Mirror ca. 1. ſect. 2. Vide ſtatutes de 4 E 3. ca. 14. & 36. E 3. ca. 10.

There haue beene in the time of, and ſince the Conqueſt, in the reignes of H. 1. King Stephen, H. 2. R. 1. King Iohn, H 3. et. 280. Seſſions of Parliament, and at euerie Seſſion diuers Acts of Parliament made, no ſmall number whereof are not in Print. Mirr ca. 2, ſect. 4. 7, 10. 14. ca. 4. de defaults, & cap. de Homicide cap. 1. ſect. 13 cap. 4. de Poyns. Ockam quid cum Ven. Matth. Pariſ. 212, 213,

The iuriſdiction of this Court is ſo tranſcendent, that it maketh, inlargeth, diminiſheth, abrogateth, repealeth and reuiueth Lawes, Statutes, Acts and Ordinances concerning matters Eccleſiaſticall, Capitall, Criminall, Common, Ciuill, Martiall, Maritime, and the reſt. None can begin, continue or diſſolue the Parliament but by the Kings authoritie. Of which Court it is ſaid, (a) Que il eſt de treſgrand honor & juſtice, de que nul doit imaginer choſe diſhonorable. (b) Habet rex curiam ſuam in concilio ſuo in Parliamentis ſuis, præſentibus Prælatis, Comitibus, Baronibus, Proceribus, & aliis viris peritis, vbi terminatæ ſunt dubitationes judiciorum, & nouis iniuriis emerſis noua conſtituuntur remedia, & vnicuique juſtitia prout meruerit retribuetur ibidem. But this properly doth belong to the Iuriſdiction of Courts, and therefore this little taſte hereof ſhall ſuffice. (a) Pl. Com. 398. b. Doctor & Stud. ca. 55. fol. 164. (b) Fleta lib. 2. ca. 2. Forteſcue de laudibus legum Angliæ. Bracton lib. 1. ca. 2.

Sect. 165.

¶ *Customes & vsages.* Consuetudo, is one of the maine triangles of the Lawes of England, those Lawes being diuided into Common Law, Statute Law, and Custome. Of which it is said, * that Consuetudo quandoque pro lege seruatur, in partibus vbi fuerit more vtentium approbata, & vicem legis obtinet, longæui enim temporis vsus & cõsuetudinis non est vilis authoritas. (c) Longa possessio (sicut jus) parit jus possidendi, & tollit actionem vero domino.

(*) Bract. lib.1.ca.3.fol.2.

(c) Idem lib.2.fol.52.

Of euerie custome there bee two essentiall parts, Time and Vsage, Time out of minde, (as shall bee said hereafter) and continuall and peaceable vsage without lawfull interruption.

fol. 170.

¶ *Que nont pas auters villes.* It is necessarie to be knowne what customes may be alleaged in an vpland towne which is neither Citie nor Borough, * In an vpland Towne, that is neither in Citie nor Borough, such a custome to deuise lands cannot be alleaged. Neither in an vpland Towne cannot there be a custome of Borough English or Gauelkinde, but these are customes which may bee in Cities or Boroughes. (d) Also if lands be within a Mannor, Fee, or Seigniorie, the same by the custome of the Mannor, Fee, or Seigniorie, may be deuisable or of the nature of Gauelkinde or Borough English. * But an vpland Towne may alleage a Custome to haue a way to their Church, or to make By-lawes for the reparations of the Church, the well ordering of the Commons, and such like things. And it is to bee obserued that in speciall cases a custome may bee (e) alleaged within a Hamlet, a Towne, a Burgh, a Citie, a Mannor, an Honor, an Hundred, and a Countie: but a Custome cannot be alleaged generally within the Kingdome of England, for that is the Common Law.

(*) 44.E.3.33. 40.Ass.4. 27. 41.21.E.4. 54. 43.E.3.32.

(d) 21.E.4.53.54.

(*) 21.E.4.54.15.E.4.29. 11.H.7.14. 44.E.3.18. 21.H.7.40.

(e) Bract.lib.4.271. 34.E.1. detinue 60. 17.E.2. detinue 58. 3.E.3. dett.156. 30.E.3.25. 39.E.3.6.9. 10. 31.E.3. render 6. 17.E.3.27. 21.E.4.28. 22.E.4.8.7.E.3.51. 30.E.3.23. 34.H.8. Dier 54. F.N.B.122. 5.E.3. tresp.13. Vide Glanuil.li.7.ca.3.9.

¶ *Lepuisne fits inheritera.* And yet by some customes the youngest brother shall inherit, for, Consuetudo loci est obseruanda.

¶ *Touts les terres ou tenements:* Either in Fee simple, Fee taile, or any other inheritance. If lands of the nature of Borough English be letten to a man and his heires during the life of I. S. and the Lessee dieth, the youngest sonne shall enioy it.

¶ *Borough English:* So called, because this custome was first (as some hold) in England.

Sect. 166.

¶ AND this is called Frankbanke, Francus bancus. Consuetudo est in partibus illis, quod vxores maritorum defunctorũ habeant francum bancum suum de terris Sockmannorum tenent' nomine dotis.

Bract.lib.4.tract.6. ca.13. F.N.B.150.o.Pl.Com. 413.

¶ ITem, en aſcun burghes per le cuſtome feme auera pur ſa dower touts les teuements q̃ fueront a ſa baron, &c.

ALſo in some Boroughes by custome, the wife shall haue for her dower all the tenements which were her husbands.

¶ Que

¶ *Que fueront a ſa baron, &c.* Here is implyed by (&c.) that in ſome places (l) F. N. B. 150.
wife ſhall haue the moitie of the lands of her huſband ſo long as ſhe liues vnmarried, as
in Gauelkinde. And of lands in Gauelkinde a man ſhall bee Tenant by the Curteſie with-
out hauing of any iſſue. In ſome places the Widow ſhall haue the whole, or halfe, Dum ſola 10. E. 3. aide 129. v. 30. a'.
& caſta vixerit, and the like.

Sect. 167.

¶ ITem, en aſcuns burghes per le cuſtome hõe poit deuiſer per ſon teſtament ſes terres & tenements que il ad en fée ſimple deins meſme le burgh al temps de ſ̃ mozant, & per force de tiel deuiſe, celuy a que tiel deuiſe eſt fait, apres le mozt le deuiſor poit entrer ẽ les tenements iſſint a luy deuiſes, a auer & tener a luy ſolonque la forme & effect del deuiſe, ſans aſcun liuerie de ſeiſin deſtre fait a luy, &c.

ALſo in ſome Boroughs by the cuſtome, a man may deuiſe by his Teſtament his Lands and Tenements which hee hath in Fee ſimple within the ſame Borough at the time of his death, and by force of ſuch deuiſe, he to whom ſuch deuiſe is made after the death of the Deuiſor, may enter into the Tenements ſo to him deuiſed, to haue & to hold to him after the forme & effect of the deuiſe, without any liuerie of ſeiſin thereof to bee made to him, &c.

¶ *Deuiſer.* This is a French word, & ſignifieth ſermocinari to ſpeake, for teſtamentum eſt teſtatio mentis, & index animi ſermo. Now a deuiſer per ſon teſtament, is to ſpeake by his Teſtament what his minde is to haue done after his deceaſe. ms v: Cowell Interp: verbo Deuiſe.

¶ *Per ſon teſtament.* Teſtamentum eſt (m) duplex, 1. In ſcriptis. 2. Nunçupatiuum, ſeu ſine ſcriptis. And in ſome Cities and Boroughs lands may (n) paſſe as chatels by Will nuncupatiue or parol without writing. Reuera (o) terminatum eſt quod poteſt legari vt catallũ tam hæredita s quam perquiſitum per Barones London, & Burgenſes Oxon. ideo verum eſt quod in Burgis non jacet aſſiſa mortis anteceſſoris. But in law moſt commonly, Vltima voluntas in ſcriptis, is vſed where Lands or Tenements are deuiſed, and Teſtamentum when it concerneth chattels.

(m) Vide ſect. 586.
(n) Britton fol. 164 212. b.
(o) Bract. lib. 4. fol. 172. Fleta lib. 5. cap. 5. & lib. 2. cap. 50.

¶ *Ses terres ou tenements.* And by the ſame Cuſtome he may deuiſe a Rent out of the ſame Lands and Tenements. 4. E. 3. 53. 7. H. 6. 1. 14 H. 8. 5 22. Aſſ. 78. Abbr. Aſſ. 118. b. 4. E. 2. mordanc. 29. 49. E. 3. 17. F. N. B. 196. 21. H. 6. 38. a. 7. E. 2. ti. mordanc.

¶ *Que il ad en Fee ſimple.* For Lands in taile are not deuiſable by Will, and therefore he in this place neceſſarily added (que il ad en Fee ſimple) and purpoſely omitted the ſame in the clauſe concerning Borough Engliſh, becauſe there an eſtate taile is included.

¶ *Poet entrer.* Note, the cuſtome of a Citie or Borough concerning the deuiſe of lands is, Quod liceat vnicuique ciui ſiue burgenſi, &c. eiuſdem ciuitatis ſiue burgi tenementa ſua in eadem ciuitate ſiue burgo in teſtamento ſuo in vltima voluntate ſua, tanquam catalla ſua legare cuicunque voluerit, &c. (p) Now if a man deuiſeth either by ſpeciall name or generally, goods or chatels reall or perſonall, and dieth, the Deuiſee cannot take them without the aſſent of the Executors. But when a man is ſeiſed of lands in fée, and deuiſeth the ſame in fee, in taile, for life, or for yeares, the Deuiſee ſhall enter, for in that caſe the Executors haue no medling therewith. And in the caſe of a deuiſe by Will of lands, whereof the Deuiſor is ſeiſed in fée, the freehold or intereſt in Law is in (q) the Deuiſee before he doth enter, and in that caſe nothing (r) (hauing regard to the eſtate or intereſt deuiſed) deſcendeth to the heire. But if the heire of the Deuiſor entreth and holdeth the Deuiſee out, he may either enter as Littleton here ſaith, or haue his Writ called Ex graui querela, and this writ (without any particular vſage) is incident to the cuſtome to deuiſe, for otherwiſe, if a deſcent were caſt before the Deuiſee did enter, the Deuiſee ſhould haue no remedy. After an actuall poſſeſſion this Writ lieth not, for then the Deuiſee may haue his ordinarie remedy by the Common Law,

(p) 2. H. 6. 16. 27. H. 6. 8. 2. E. 4. 13. 21. E. 4. 21. 4. H. 7. 16.
(q) 4. Mar. Br. tit. deuiſ. 49.
(r) Regiſt. fol. 244. 39. Aſſ. pl. 6. 3. E. 3. deuiſe 12. 29. Aſſ. 31. 34 E. 3. tit. Formdon. Pl. poſtr. 30. H. 8. deuiſe 28. F. N. B. 198. 199. &c. Briton fol. 212. b.

And well said Littleton, that Lands and Tenements were deuisable in Burghes by custome, for that (f) at the Common Law no Lands or Tenements were deuisable by any last Will and Testament, nor ought to be transferred from one to another, but by solemne liuerie of seisin, matter of record, or sufficient writing, but as Littleton here saith, that by certain priuate customes in some Burghes they are deuisable. But now since Littleton wrote, by the Statutes of 32. and 34. H. 8. Lands and Tenements are generally deuisable by the last Will in writing of the Tenant in Fee simple, whereby the ancient (t) Common Law is altered, whereupon many difficult questions, & most commonly disherison of heires (whenthe Deuisors are pinched by the messengers of death) doe arise and happen. But (u) these Statutes take not away the custome to deuise, whereof Littleton speaketh: for though lands deuisable by custome be holden by Knights Seruice, yet may the owner deuise the whole land by force of the custome, and that shall stand good against the heire for the whole. But the deuise of lands holden by Knights Seruice by force of the statutes is vtterly void for a third, and the same shall descend to the heire. If he hath any lands holden by Knights Seruice in Capite, and lands in Socage, he can deuise but two parts of the whole, but if he hold lands by Knights Seruice of the King, and not in Capite, or of a meane Lord, and hath also lands in Socage, he may deuise two parts of his land holden by Knights Seruice, and all his Socage lands. If he holds any land of the King in Capite, and by act executed in his life time he conueyeth any part of his lands to the vse of his wife, or of his children, or payment of his debts, though it be with power of reuocation, he can deuise by his Will (x) no more, but to make vp the land so conueyed two parts of the whole. And if the land so conueyed amount to two parts or more, then he can deuise nothing by his Will. But if he hath land onely that is holden in Socage, then he may deuise by his Will all his Socage lands; so as it is apparant that the benefit of the Lords was more carefully prouided for, than the good of the heire. But if a man holding some land of the King by Knights Seruice in Capite, conuey two parts of his land to the vse of his wife for life, now (as hath beene said) hee can deuise no part of the residue, but yet he may by his Will deuise the reuersion of the two parts so conueyed to his wife: for the intention of the Act is to giue power to dispose two parts intirely.

If the Deuisor leaue a full third part of the land immediately to descend in fee simple or in taile, he may deuise the other two parts in fee simple, if a third part be not left, it shall be made vp according to the Act. But hereditaments that are not of any yearely value, as bona & catalla felonum & fugitiuorum, waifts, estrayes, and the like, can neither bee left to descend for any part of the third part, or deuised as part of the two parts. But yet if such Franchises of vncertaine value be holden of the King in Capite, they shal restraine the deuise of all his lands and make it void for a third part. So it is if a man hath a reuersion expectant vpon an estate taile dzy & fruitlesse holden of the King by Knights Seruice in Capite, yet that shall restraine him to deuise but two parts of his lands only. And where the Statute speaks of a remainder, it is to be intended only of such a remainder, as may draw Ward & Marriage by the Common Law. As if a reuersion vpon a state for life be granted to one for life, the remainder in fee, during the life of the grantee for life it is not within the statute, but if he dieth this is such a remainder as is within the Statute, although it be dzy & fruitles. If a gift in taile or a lease for life be made, the remainder in fee, this remainder in fee is not within the Statute. But if a man hath lands holden by Knights Seruice in Capite in possession, reuersion, or remainder, and also seised of Socage land, and deuise by his Will all his lands, and after he selleth away the Capite land, or that land is recouered from him, the Will is good for the whole Socage land. The values both of the third part, and the two parts of the lands shall be taken as they happen to be at the time of the death of the Deuisor, for then his will takee effect.

He that holds by Knights Seruice in chiefe deuiseth by his Will a rent, common, or other profit as shall amount to the value of two parts out of all his lands, this rent issueth only out of the two parts, and the third part is free of it. And if he hath lands holden by Knights Seruice, and not in Capite, he may charge two parts of the knight Seruice land as is aforesaid, and all his Socage land, &c. And if he hath onely Socage land, he may by his Will charge it at his pleasure, so as the Kings and Lords third part is free, and the heires two parts charged, and this is onely by force of the Statute of 34. H. 8.

If a man make a feoffment in fee of his lands holden by Knights Seruice to the vse of such person and persons, and of such estate and estates, &c. as he shall appoint by his Will, in this Case by operation of Law, the vse and state vests in the Feoffor, and hee is seised of a qualified fee. In this case if the Feoffor limit estates by his will, by force, and according to his power, there the vses and estates growing out of the feoffment are good for the whole, and the last will is but directory. But in that case if the Feoffor had deuised the land (as owner thereof) without any reference to the feoffment and power thereby giuen then taking effect by the will, it is void for a third part. But if he had formerly conueyed two parts to the vse of his wife, &c. and after deuised the residue by his will without any reference to his power by the feoffment,

(f) 27. H. 8. cap. 10. Britton fol. 312. 78. b. 164. Vide before in this sect. 32. H. 8 ca. 8 34. H. 8. ca. 5.

(t) Vide lib 3 fol. 25. &c. in Butler & Bakers case. Lib. 6. fol. 16. & 76. Lib. 8. fol. 84. 85. Lib. 9. 13. Lib. 10. 82. 83 84. Lib. 11. fol. 24. Lib. 1. fol. 25. a.

(u) Dier 4. & 5. Ph. & Mar. 155. an. 6 Eliz. Dalison. Pasch. 10 Eliz. between Barber and his wife wife plaintife, and William Long defendant in a Writ of partition. Bendloes adiudged.

(x) Lib 6. fol 17. 18. Sir Edw. Clercs case. Lib. 3 fol. 34 b. Butler & Bakers case.

Lib. 10 fol 80. 81. Leon. Loueyes case.

Leon. Loueyes case, & Butler & Bakers case. Vbi supra.

Leon. Loueyes case. Vbi supra, fol. 81.

Lib. 8 fol. 84. 85. Sir Richard Pexhals case. Lib. 3. fol. 33. Butler & Bakers case.

Lib. 6 fol. 17. 18 in Sir Edw. Clerks case.

feoffment, yet this Will shall enure to declare the vse vpon the feoffment, because he had no power as Owner of the land to deuise any part of it. But if the feoffment had beene made to the vse of his last Will, although he deuiseth the land with reference to the feoffment, yet it taketh effect onely by the Will, and not by the feoffment. All which and many other points of intricate and abstruse learning you shall more largely read in my Reports.

¶ *Sauns ascun liuerie de seisin deste fait a luy, &c.* For in his life time Liuerie of seisin could not be made, because his Will is ambulatorie till his death, and no estate passeth during his life, neither can Liuerie be made after his decease, for then it commeth too late. 40. Ass. 38.

Here (&c.) implyeth that the deuise is good without any Attornement of any Lesse or Tenant.

Sect. 168.

¶ NOta coment q̄ home ne poit granter ne doner ses tenements a sa feme, durant le couerture, pur ceo que sa feme & luy ne sont forsq; vn person en Ley, vncore p̄ tiel custome il poit deuiser per testament ses tenements a sa feme, a auer & tener a luy en Fée simple, ou en Fée taile, p̄ terme de vie ou pur terme des ans, pur ceo que tiel deuise ne p̄ist effect forsq; apres la mort le Deuisor, car touts deuises ne p̄eignōt effect forsq; apres la mort le deuisor. Et si home fait a diuers temps diuers testaments, & diuers deuises, &c. vncore le darrein deuise & volūt fait p̄ luy estoiera, & lauters sōt voides.

ALso though a man may not grant nor giue his tenements to his Wife during the couerture, for that his Wife and hee bee but one person in the Law, yet by such custome hee may deuise by his Testament his tenements to his wife, to haue and to hold to her in Fee simple, or in Fee taile, or for terme of life, or yeares, for that such deuise taketh no effect, but after the death of the Deuisor. And if a man at diuers times make diuers Testaments, and diuers deuises, &c. yet the last deuise & will made by him, shall stand, and the other are void.

¶ *Home ne poet granter ne doner ses tenements a sa feme, &c.* This opinion is (a) cleere, for by no conueyance at the Common Law a man could during the couerture either in possession, reuersion or remainder, limit an estate to his wife. But a man may by his deed couenant with others to stand seised to the vse of his wife, or make a Feoffment or other Conueyance to the vse of his wife, & now the state is executed to such vses by the Statute (b) of 27. H. 8. for an vse is but a trust and confidence, which by such a meane might be limited by the husband to the wife. But a man cannot couenant with his wife to stand seised to her vse, because hee cannot couenant with her for the reason that Littleton here yeeldeth. (a) 4. H. 7. (b) 27. H. 8. cap. 10.

¶ *Durant le couerture.* That is, during the continuance of the marriage. For to couer in English is Tegere in Latine, and is so called, for that the wife is sub potestate viri, and shee is disabled to contract with any without the consent of the husband. (c) Omnia quæ sunt vxoris sunt ipsius viri, non habet vxor potestatem sui sed vir. (c) Bracton lib. 2. ca. 15.

¶ *Vn person en Ley.* Vir & vxor sunt quasi vnica persona quia caro vna, & sanguis vnus, res licet sit propria vxoris, vir tamen eius custos, cum sit caput mulieris. Idem, li. 5. tract. 5. cap. 25.

If Cesley que vse had deuised, that his wife should sell his land, and made her Executrix and died, and she tooke another husband, she might sell the land to her husband, for she did it in auter droit, and her husband should be in by the Deuisor. 10. H. 7. 10.

¶ *Per testament.* Testamentum is (as is said before) Testatio mentis, and so famously

111. a 2.

rably to be expounded according to the meaning of the Testator. In contractibus benigna, in testamentis benignior, in restitutionibus benignissima interpretatio facienda est.

(d) 4.E.2.tit. Deuise 23.
(e) 44.Ass.p.36. 44.E.3.33. 18.E.3.8.
(f) Britton 264.

¶ *A son feme.* And Littleton himselfe yéeldeth the reason (d) because the deuise doth not take effect till after the decease of the Deuisor. And in some (e) places the custome is generall, that he may deuise any lands, &c. In some (f) places lands onely which the Deuisor purchased. In some place that he may deuise any estate, in some places for life onely, &c.

But albeit the last Will doth not take effect vntill after his decease, yet if a Feme Couert be seised of lands in fee, she cannot deuise the same to her husband, because at the making of her Will she had no power being sub potestate viri to deuise the same, and the Law intendeth it should be done by coertion of her husband.

2.H.5.8. 2.R.3.22.

¶ *Diuers testaments.* For Voluntas testatoris est ambulatoria vsque ad mortem (as hath beene said before) and the later Will doth countermand the first. And it is truly said that the first grant, and the last Will is of greatest force.

¶ *Diuers deuises, &c.* Here by (&c.) is to be vnderstood aswell deuises of Chatels reall or personall, as of freehold and inheritance. Also that in one Will where there be diuers deuises of one thing the last deuise taketh place. Cum duo inter se pugnantia reperiuntur in testamento vltimum ratum est.

Sect. 169.

¶ *Que ses executors poient aliener ou vender ses tenements.* And that which in Littletons time a man might doe by custome in some particular places, hee may now doe by the Statutes of 32. & 34. H.8. generally.

32.H.8.cap.2.
34.H.8.cap.5.

¶ *Les Executors apres le mort lour testator poient vender.* Here it appeareth, that the Executors hauing but a power, as Littleton putteth the case, to sell, they must all ioyn in the sale. Then put the case that one dies, it is regularly true, that being but a bare authoritie, the suruiuors cannot sel. But if a man deuiseth his land to A. for terme of life, and that after his decease, his lands shall be sold by his executors generally, (as Littleton here putteth his case) and make three or foure Executors, and during the life of A. one of the executors dieth, & then A. dieth, the other two or three Executors may sell, because the land could not be sold before, and the plurall number of his Executors remaine. But if they had beene named by their names, as by I.S. I.N. I.D. and I.G. his Executors,

49.E.3.16. 29.Ass.17. 39.Ass.17. 9.H.6,24. 15.H.7.12.21. 14.H.8.6. 30.H.8.tit. Deuise Br. 31. 2.Eliz Dyer 177.

¶ Item p tiel custome home poit deuiser per son testament que ses Executors poyent aliener & vender ses tenemẽts que il ad en Fée simple, p̃ certaine summ̃ de money a distributer p̃ son alme. En cest cas, coment que le Deuisor deuie seisie de les tenements, & les tenements discendont a son heire: vncore les executors apres le mort lour testator, poyent vender les teñts issint a eux deuises, & ouste le hr̃, & ent fait feoffm̃t, alienation, & estate p̃ fait, ou sans fait a eux a q̃ux l' vend̃ est fait. Et issint pois veier icy vn cas ou hõe poit faire loial estat, & vncor il nauoit riens en

ALso by such custom a man may deuise by his Testament, that his Executours may alien and sell the Tenements that hee hath in Fee simple, for a certaine sum, to distribute for his Soule: In this case though the deuisor die seised of the tenemẽts & the tenements descend vnto his heire, yet the Executors after the death of the Testator may sell the tenements so deuised them, and put out the heire, & thereof make a feoffment, alienatiõ, and estate by Deed, or without Deed to them to whom the sale is made. And so may ye here see a case where a Man may make a lawfull estate,

les

les Tenements al temps del eſtate fait. Et le cauſe eſt, pur ceo que la cuſtome & vſage ad eſte tiel. Quia conſuetudo ex certa cauſa rationabili vſitata priuat communem Legem.

& yet he hath nought in the tenements at the time of the eſtate made: and the cauſe is, for that that the cuſtome & vſage is ſuch. *For a cuſtome vſed vpon a certain reaſonable cauſe depriueth the common law.*

ſons in law, one of his ſons in law died in the life of the Donee, and after the Donee dyed without iſſue, and then the foure of the ſonnes in law ſold the land, and it was adiudged that the ſale was good, becauſe they were named generally by his ſonnes in Law, and the Lands could not be ſold by them all. And the words of the Will, in a benigne interpretation are ſatisfied in the plurall number, albeit they had but a bare authoritie: but if they had beene particularly named, it had beene otherwiſe. But if a man deuiſeth lands to his Executors to be ſold, and maketh two Executors, and the one dieth, yet the ſuruiuor may ſell the land, becauſe as the ſtate, ſo the truſt ſhall ſuruiue; and ſo note the diuerſitie betweene a bare truſt, and truſt coupled with an intereſt. In both thoſe caſes the Executors may (a) ſell part of the land at one time, and part at another, as they may finde purchaſers.

then in that caſe the ſuruiuors could not ſell the ſame, becauſe the words of the Teſtator could not be ſatisfied; and I my ſelf knew this caſe adiudged*: A ſpeciall verdict was found, that A. was ſeiſed of certaine lands in fee, and deuiſed the ſame in taile, and if the Donee died without iſſue, that his ſaid land ſhould be ſold by his ſons in law, he in truth hauing fiue

* Hill. 26. Elsmer Vincent & Lee in the Kings Bench.

39. Aſſ. p. 17.
4. Eliz. Dier 210.
23. Eliz. Dier 371.
Paſch. 32. Eliz. Ro. 1307. in Communi Banco, and ſo reſolued in Vincents caſe.

In Littletons caſe admit that one Executor had refuſed to ſell (then as the Law ſtood when Littleton wrote) it was cleare that the others could not ſell, but now by the Statute (b) of 21. H 8. it is prouided that where lands are willed to be ſold by Executors, that though part of them refuſe, yet the reſidue may ſell. And albeit the letter of the Law extendeth only where Executors haue a power to ſell, yet being a beneficiall Law, it is by conſtruction extended where lands are deuiſed to Executors to be ſold. Yet in neither of thoſe caſes, albeit one refuſe, can the other make ſale to him that refuſed, becauſe he is partie and priuie to the laſt will, and remaines Executor ſtill. Mine aduice to them that make ſuch deuiſes by wills, to make it as certaine as they can, as that the ſale bee made by his Executors or the Suruiuors or Suruiuor of them, if his meaning be ſo, or by ſuch or ſo many of them, as take vpon them the probate of his will, or the like. And it is better to giue them an authoritie than an eſtate, vnleſſe his meaning be they ſhould take the profits of his lands in the meane time, and then it is neceſſarie that he deuiſeth, that the meane profits till the ſale ſhall be aſſets in their hands, for otherwiſe they ſhall not be ſo. But hereof thus much ſhall ſuffice.

(a) Lib. 1. fol. 173. in Digges caſe.
(b) 21. H. 8. cap. 4.

Tr. 27. H. 8. in the Common Place Serjeant Bendloes report.

¶ *Et ent faire feoffment.* For albeit the Executors in this caſe haue no eſtate or intereſt in the land, but only a bare and naked power, yet this Feoffment amounteth to an alienation, to veſt the land in the Feoffee, as it appeareth here, and the Feoffee ſhall bee in by the Deuiſor.

49. E. 3. 16. 38. Aſſ. 3. 39. Aſſ. 17 13. E. 3. deuiſe 3. 14. H. 8. 10. 15. H. 7. 12. b.

¶ *Per fait ou ſans fait.* And therefore if by the cuſtome a man deuiſeth that a Reuerſion or any other thing that lyeth in grant ſhall be ſold by the Executors, they may ſell the ſame without Deed, for the Vendee ſhall be in by the Deuiſor, and not by the Executors, as hath beene ſaid.

19. H. 6.

¶ *Conſuetudo ex certa cauſa rationabili vſitata priuat communem legem.* Quia conſuetudo contra rationem introducta potius vſurpatio quam conſuetudo appellari debet, Conſuetudo præſcripta & legitima vincet legem.

¶ *Priuat communem legem.* For no cuſtome or preſcription can take away the force of an Act of Parliament, and therefore Littleton materially ſpeaketh here of the Common Law.

4. E. 4. 4. 11. H. 4. 7. 39. H. 6. 39. 7. H. 6. 1. 2. 9. H. 6. 36. 8. H. 7. 4. 8. Eliz. Dier. 247.

Sect. 170.

¶ ET nota q̄ nul cuſtome eſt allowable, meſque tiel cuſtome q̄ ad eſte vſe

And note that no cuſtome is to bee allowed, but ſuch cuſtome as hath bin vſed

¶ *Preſcription.* Preſcription is a title taking his ſubſtance of vſe & time allowed by the Law; Præſcriptio eſt ciuilis ex vſu & tempore ſubſtantiam capiens

capiens ab authoritate Legis. In the Common Law a prescription which is personal is for the most part applyed to persons, being made in the name of a certaine person and of his Ancestors, or those whose estate he hath, or in bodies politique or corporate, & their Predecessors. for as a naturall body is said to haue Ancestors so a body politique or corporate is said to haue Predecessors. And a custome which is locall is alleaged in no person, but said within some Mannor or other place. As taking one example for many, I S seised of the mānor of D. in fee prescribeth thus: That I S his Ancestors, and all those whose estate he hath in the said Mannor, haue time out of minde of man had and vsed to haue Common of pasture, &c. in such a place, &c. being the land of some other, &c. as pertaining to the said Mannor. This properly we call a prescription. A custome is in this manner: A Copyholder of the Mannor of D. doth plead, that within the same Mannor, there is and hath been such a custome time out of minde of man vsed, that all the Copyholders of the said Mannor haue had and vsed to haue Common of pasture, &c. in such a waste of the Lord, parcell of the said Mannor, &c. where the person neither doth or can prescribe, but alleageth the custome within the Mannor. But both to customes and Prescriptions, these two things are incident inseparable, viz. possession, or vsage: and Time. Possession must haue three qualities, it must be long, continual, and peaceable, Longa, continua, & pacifica: for it is said, Transferuntur dominia sine titulo & traditione, per vsucapionem, s. per longam, continuam, & pacificam possessionem. Longa, i. per spatium temporis per legem definitum, of which hereafter shall bee spoken. Continuam dico ita quod non sit legitime interrupta,

31.E.4.1. 2. Mariz, Br. Prescr. 100. 6.E.6. Dyer 71. 14.Ed.3. Bar.277. 43.E.3.32. 9.H.6.26. 22.H.6.14. 16.E.2.tit Prescript 53. 45.Ass.8. 40.Ass.27. 41. 31.E.4.53.54.

Prou. s. 51.52.

per title de prescription. s. ō temps dont memorie ne curt. Mes diuers opinions ont este ō temps dont memorie, &c. & ō title p prescription, q̄ est tout vn en Ley. Car aicuns ont dit que temps de memorie serra dit de temps de limitation en vn briefe de droit, scilicet de temps le Roy R. le i. puis le conquest, come est done per l'statute de Westminster 1. pur ceo que le briefe de droit est le pluis haut briefe en sa nature que poit estre, & per tiel briefe home poit recouer son droit de la possession son Auncestors de pluis auncient temps que home purroit per ascun briefe per le ley, &c. Et entant que il est done p le dit statute que en briefe de droit nul soit oye a demander de le seisin son Auncestors de pluis longe temps q̄ de temps le Roy R. auantdit, issint ceo ē proue q̄ continuance de possession, ou auters customes, & vsages vses puis le dit temps, est le title de prescription, &c. & hoc certum est. Et auters

by title of prescription, that is to say, from time out of minde. But diuers opinions haue beene of time out of minde, &c. and of title of prescription, which is all one in the Law. For some haue said, that time of minde should bee said from time of limitation in a Writ of right, that is to say, from the time of King *Richard* the first after the Conquest, as is giuen by the Statute of Westminster the first, for that a Writ of right is the most highest Writ in his nature that may be. And by such a writ a man may recouer his right of the possession of his Ancestors, of the most ancient time that any man may by any writ by the Law, &c. And in so much that it is giuen by the said Estatute, that in a writ of right none shall bee heard to demand of the seisin of his Ancestors of longer time, than of the time of King *Richard* aforesaid, therefore this is proued, that continuance of possession, or other customes & vsages vsed after the same time is the title

ont

on dit, q̃ bien & verity eſt que ſeiſin & continuance puis le dit limitation, eſt vn title ð preſcription, come eſt auantdit, & per cauſe auantdit. Mes ils ont dit, que il y auxy vn auter title ð preſcription, q̃ fuit a la common ley deuant aſcun eſtatute de limitation de briefe, &c. & ceo fuit lou vn cuſtome, ou vn vſage, ou auter choſe ad eſte vſe de temps dont memorie des homes ne curt a le contrarie. Et ils ont dit, que il eſt proue p le pleder, lou hõe voit pleder vn title de preſcription ð cuſtome il dira q̃ tiel cuſtom ad eſte vſe, de tẽpore cuius contrariũ memoria hominũ non exiſtit, & ceſt autãt a dire quãt tiel matter eſt pleð, q̃ nul home adonqz en vie ad oye aſcun proofe a le contrary, ne auoit aſcun conuſans a le cõtrary. Et entãt que tiel title de preſcriptiõ fuit a le common ley, & nient ouſte p aſcun eſtatute, ergo, il demurt come il fuit a le common ley, & le pluis toſt, entant que la dit limitation de briefe ð droit eſt de cy long tẽpz paſſe, Ideo

of preſcription, and this is certaine. And others haue ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they haue ſaid that there is alſo another title of preſcription that was at the Cõmon Law, before any eſtatute of limitation of writs, &c. And that it was where a cuſtome or vſage, or other thing hath beene vſed, for time whereof mind of man runneth not to the contarie. And they haue ſaid that this is proued by the pleading: where a man will plead a title of preſcription of cuſtome hee ſhall ſay that ſuch cuſtome hath beene vſed from time whereof the memorie of men runneth not to the contrary, that is as much to ſay, when ſuch a matter is pleaded, that no man then aliue hath heard any proofe of the contrarie, nor hath no knowledge to the contrarie, & inſomuch that ſuch title of preſcription was at the cõmon law, & not put out by an eſtatute, *Ergo*, it abideth as it was at the cõmon law, & the rather, inſomuch that the ſaid limitatiõ of a writ of right, is of ſo long time paſſed, *Ideo quære de hoc.* And

Pacificam dico, quia ſi contentioſa fuerit, idem erit quod prius, ſi contentio fuerit iuſta. Vt ſi verus Dominus ſtatim cum intruſor vel diſſeiſor ingreſſus fuerit ſeiſinam, nitatur tales viribus repellere, & expellere, licet id quod inceperit perducere non poſſit ad effectum, dum tamen cum defecerit diligens ſit ad impetrandum & proſequendum. Longus vſus nec per vim, nec clam, nec precatio, &c. Idem fol. 222. b.

If a man preſcribeth to haue a rent, and likewiſe to take a Diſtreſſe for the ſame, it cannot be auoided by pleading, that the rent hath beene alwayes paid by coherſion, albeit it began by wrong. 13. E. 4. 6.

¶ *Vn title de preſceiption.* Séing that preſcription maketh a title, it is to be ſéene, firſt to what things a man may make a title by preſcription without charter. And ſecondly, how it may be loſt by interruption.

For the firſt, as to ſuch Franchiſes and Liberties as cannot bee ſeiſed as forfeited, before the cauſe of forfeiture appeare of Record, no man can make a title by preſcription becauſe that preſcription being but an vſage in pais, it cannot (*) extend to ſuch things as cannot bee ſeiſed nor had without matter of Record: as to the goods and chattels of Traitors, Felons, Felons of themſelues, Fugitiues, of thoſe that bee put in exigent, Deodands, Conuſance of Pleas, to make a Corporation, to haue a Sanctuarie, to make a Coro-

ner,

21. H. 6. Preſcrip. 44. 21. E. 4. 6. 1. H. 7. 13. 9. H. 7. 11. 20. 7. H. 6. 45. 6. E. 3. 32. 42. 45. E. 3. 2. 2. E. 4. 26.

(*) Fleta lib. 1. cap. 25. Brit. f. 6. & 15. 44. Aſſ. p. 8. 40. E. 3. 3. Stamf. Pl. Cor. 21. 51. Lib. 5. fol. 109. 110. Lib. 9. fol. 29.

ner, &c. to make Conseruators of the peace, &c.

de hoc quære. Et pluſors auters cuſtomes & vſages ont tiels ancient burges.

many other cuſtomes and vſages haue ſuch ancient Boroughs.

(e) 22.E.3. Coron.241. 9.H.7.11.20. 18.H.6.prescr.45. 11.H.4.10. 21.H.7.33. 9.E.4.12. 39.E.3.35. 46.E.3.16. 11.H.6.25. F.N.B.91. 1.H.7.24 Stanf. Pl. Cor.38. 44.E.3.4. 22.E.4.43.44. 3.E.3. Brook presc.57. 44.Aſſ.1.

(e) But to Treaſure Troue, Waikes, Eſtraics, Wreeke of ſea, to hold Pleas, Courts of Leets, Hundreds, &c. Infange theefe, Outfange theefe, to haue a Parke, Warren, Royall fiſhes, as Whales, Sturgions, &c. Faires, Markets, Franke foldage, the keeping of a Gaole, Toll, a Corporation by preſcription, and the like, a man may make a Title by vſage and preſcription only without any matter of record, (*) Vide Sect. 310. where a man ſhall make a Title to lands by preſcription.

(*) 8.H.6.16.

But it is to be obſerued (f) that although a man cannot as is aforeſaid preſcribe in the ſaid Franchiſe to haue Bona & catalla proditorum, felonum, &c. yet may they and the like be had obliquely or by a meane by preſcription; For a Countie Palatine may be claimed by preſcription, and by reaſon thereof to haue Bona & catalla proditorum, felonum, &c.

(f) 12.E.4.16. 32.H.6.25. 12.Eliz.Dier 288.289.

As to the ſecond, by what meanes a Title by preſcription, or cuſtome may be loſt by interruption; It is to be knowne that the title being once gained by preſcription or cuſtome, cannot be loſt by interruption of the poſſeſſion for 10. or 20. yeares, but by interruption in the right, as if a man haue had a Rent or Common by preſcription, vnitie of poſſeſſion of as high and perdurable eſtate is an interruption in the right.

11.E.3 tit.iſſue 40.

15.E.3.tit.iudgement 133. 14.E.3.ibid.155.

In a Writ of Meſne the Plaintife made his title by preſcription, that the Defendant and his Anceſtors had acquited the Plaintife & his Anceſtors, and the Terre tenant time out of minde, &c. the Defendant tooke iſſue, that the Defendant & his Anceſtors had not acquited the Plaintife & his Anceſtors & the Terre-tenant, and the Iurie gaue a ſpeciall verdict, that the Grandfather of the Plaintife was enfeoffed by one Agnes, and that Agnes and her Anceſtors were acquited by the Anceſtors of the Defendant time out of minde before that time, ſince which time no acquitall had beene, and it was adiudged and affirmed in a Writ of error, that the Plaintife ſhould recouer his Acquitall, for that there was once a title by preſcription veſted, which cannot be taken away by a wrongfull Ceſſer to acquite of late time, and albeit the verdict had found againſt the letter of the iſſue, yet for that the ſubſtance of the iſſue was found, viz. a ſufficient title by preſcription, it was adiudged both by the Court of Common Pleas, and in the Writ of error by the Court of Kings Bench for the plaintife, which is worthy of obſeruation. So a Modus decimandi was alleaged (*) by preſcription time out of minde for tithes of lambs, and thereupon iſſue ioyned, and the Iurie found that before 20. yeares then laſt paſt there was ſuch a preſcription, and that for theſe 20. yeares, he had paid tithe lamb in Specie, and it was obiected firſt that the iſſue was found againſt the Plaintife, for that the preſcription was generall for all the time of preſcription and 20. yeares laſt thereof. 2. That the partie by payment of tithes in Specie had waiued the preſcription or cuſtome. But it was adiudged for the Plaintife in the prohibition, for albeit the Modus decimandi had not beene paid by the ſpace of 20. yeares, yet the preſcription being found, the ſubſtance of the iſſue is found for the Plaintife. And if a man hath a Common by preſcription, and taketh a leaſe of the land for 20. yeares, whereby the Common is ſuſpended, after the yeares ended, he may claime the Common generally by preſcription, for that the ſuſpenſion was but to the poſſeſſion, and not to the right, and the inheritance of the Common did alwayes remaine, and when a preſcription or cuſtome doth make a title of inheritance (as Littleton ſpeaketh) the partie cannot alter or waiue the ſame in pais.

(*) Mich.43. & 44.Eliz. in a prohibition betweene Nowell pl. and Hicks Vicar of Edmonton defendant in the Kings Bench.

¶ *Temps dont memorie, &c. & de title per preſcription que eſt tout vn en Ley.* So as the time preſcribed or defined by Law is, time, whereof there is no memorie of man to the contrarie. (e) Omnis querela, & omnis actio iniuriarum limitata intra certa tempora.

(e) Bracton fol.314.

¶ *Temps de limitation.* Limitation as it is taken in Law is a certaine time preſcribed by Statute, within the which the Demandant in the action muſt proue himſelfe or ſome of his Anceſtors to be ſeiſed.

¶ *En briefe de droit.* In (f) ancient time the limitation in a Writ of Right was from the time of H.1. whereof it was ſaid, a tempore Regis Henrici ſenioris. After that by the Statute of (g) Merton the limitation was from the time of H.2. and by the Statute (h) of W.1. the limitation was from the time of R.1. And this is that limitation that Littleton here ſpeaketh of. Whereof in the Mirror in reproofe of the Law it is thus ſaid, (i) Abuſion eſt de counter cy longe temps dount nul ne poet teſtmoigner de vien & de oyer que ne dure my generalment ouſter 40. ans.

(f) Regiſt.138. Bract.lo.373. 5.Aſſ.p.2. 34.H.6.40.
(g) Stat. de Mert. 20.H.3.ca.8.
(h) Weſt.1.an.3.E.1.c.38. Vide W.2. 13.E.1.ca.46.
(i) Mirror ca.5.ſect.1.

Time

Time of limitation is twofold, Firſt, in Writs, and that is by diuers Acts of Parliament. Secondly, To make a title to any Inheritance, and that (as Littleton here ſaith) is by the Common Law.

Glanuil li.13.ca 3.& 34. Mirror,ca.5 ſect.4. Fleta l.2.c.38 & l.4.ſ.5. Britton fol.79.82. Bracton l.b 2.fol.32. & fol.179 253.373.

Limitation of times in Writs are prouided by the ſaid Statute of Merton, and after by the ſaid Statute of W.1. which Littleton here citeth, and which was in force when he wrote, but is ſince altered by a profitable and neceſſary Statute (k) made Anno 32. H.8. and by that Act, the former limitation of time in a Writ of Right is changed and reduced to threeſcore yeares next before the Teſte of the Writ, and ſo of other actions, as by the ſtatute at large appeareth. But it is to be obſerued, that this Act of 32.H.8. extendeth (l) not to a Formedon, in the Diſcender, nor to the Seruices of Eſcuage, Homage, and Fealtie, for a man may liue aboue the time limited by the Act, neither doth it extend to any other ſeruice, which by common poſſibilitie may not happen or become due within ſixtie yeares, as to couer the hall of the Lord, or to attend on his Lord when he goeth to warre or the like, nor where the ſeiſin is not trauerſable or iſſuable, neither doth it extend to a Rent created by Deed, nor to a Rent reſerued vpon any particular eſtate, for (m) in the one caſe the Deed is the title, and in the other the reſeruation, nor to any Writ of Right of Aduowſon, Quare impedit, or Aſſiſe of Darreine preſentment (for there was a Parſon of one of my Churches that had beene Incumbent there aboue ſixtie yeares, and died but lately) or any Writ of Right of Ward, or rauiſhment of ward, &c. but they are left as they were before the Statute of 32.H.8. But hereof thus much for the better vnderſtanding of Littleton ſhall ſuffice.

(k) 32.H.8.cap.2. See the ſecond part of the Inſtitutes. Merton, c.8.

(l) Mich.10.& 11.Eliz. Dyer 278. Fitzwilliams caſe.

Lib 4.fol.10.& 11. Beuils caſe.

(m) Lib.8.fol.65. Sir Wil. Foſters caſe.

¶ *De temps le Roy R.* 1. And that was intended from the firſt day of his reigne, for (from the time) being indefinitely, doth include the whole time of his reigne, which is to be obſerued.

1.Mar. Parliam.2.cap.5. Vide 17 E.3.11. Pl.Com 371.b.

Vide 34.H.6.36. 2 Inſt 238

¶ *Briefe de droit.* Breue de recto, a Writ of Right, ſo called, for that the words in the Writ of Right are, Quod ſine dilatione plenum rectum teneas.

¶ *Title de preſcription al Common Ley, &c. de temps dont memorie des homes ne curge al contrarie.* Docere oportet longum tempus, & longum vſum illum, viz. qui excedit memoriam hominum, tale enim tempus ſufficit pro jure.

Bract.lib.4.fol.230. Fleta lib.4.cap.24.

¶ *Aſcun proofe al contrarie.* For if there bee any ſufficient proofe of Record or writing to the contrarie, albeit it exceed the memorie, or proper knowledge of any man liuing, yet is it within the memorie of man: for memorie or knowledge is twofold. Firſt, By knowledge by proofe, as by Record or ſufficient matter of writing. Secondly, by his owne proper knowledge. A Record or ſufficient matter in writing are good memorialls, for Litera ſcripta manet. And therefore it is ſaid, when we will by any record or writing commit the memorie of any thing to Poſteritie, it is ſaid tradere memoriæ. And this is the reaſon that regularly a man cannot preſcribe or alleage a Cuſtome againſt a Statute, becauſe that is matter of Record, and is the higheſt proofe and matter of record in Law. But yet a man may preſcribe againſt an Act of Parliament, when his Preſcription or Cuſtome is ſaued or preſerued by another Act of Parliament.

28.Aſſ.25.38.Aſſ.18. 45.E.3.26.5.H.7 10. 8.H 7 7. 11.H.7 21. Dyer 23. Eliz.273. vi: Inſt: 2. pt 20: c. 21. a.

There is alſo a diuerſitie betweene an Act of Parliament in the negatiue and in the affirmatiue, for an affirmatiue Act doth not take away a cuſtome as the Statutes of Wills of 32. and 34 H 8. doe not take away a Cuſtome to deuiſe Lands, as it hath beene often adiudged. Moreouer, there is a diuerſitie betweene Statutes that be in the negatiue, for if a Statute in the negatiue be declaratiue of the ancient Law, that is in affirmance of the Common Law, there aſwell as a man may preſcribe or alleage a Cuſtome againſt the Common Law, ſo a man may doe againſt ſuch a Statute, for as our Author ſaith, Conſuetudo, &c. priuat communem legem. As the Statute of Magna Charta prouideth, that no Leet ſhall be holden but twice in the yeare, yet a man may preſcribe to hold it oftener, and at other times, for that the Statute (n) was but in affirmance of the Common Law.

Magna Charta cap.35.

(n) 6.H.7.2.8.H.4.34. 12.H.7.18.31.H.6.lect. 11.18.H.6.13.

So the Statute (o) of 34 E.1. prouideth that none ſhall cut downe any trees of his owne within a Foreſt without the view of the Foreſters: but inaſmuch as this Act is in affirmance of the Common Law, a man may preſcribe to cut downe woods within a Foreſt without the view of the Foreſter. And ſo was it adiudged in 16. Eliz. in the Exchequer by Sir Edward Sanders Chiefe Baron, and other the Barons of the Exchequer, as Sir Iohn Popham Chiefe Iuſtice of the Kings Bench reported to me.

(o) 34.E.1.tit.foreſt.Rad. 1.E.3.cap.2.

In the Eire of the Foreſt of Pickering before Willoughby, Hungerford and Hanbury, Iuſtices Itinerants there, Anno 8.E.3. I read (p) a claime made by Henry de Percy, Lord of the Mannor of Semor within the ſaid Foreſt, the Foreſters, Verderours, and Regarders found his claime to be true, viz. Quod prædictus Henricus de Percy, & omnes anteceſſores ſui tenentes

(p) Itin. Pickering. ann. 8 E.3 Rot.38.

manerium prædictum à tempore quo non extat memoria & ſine interruptione aliquali tenuerunt prædictum manerium cum pertinentiis extra regardum Foreſtæ, & habuerunt Woodwardum portantem arcum & ſagittas ad præſentandum prætentanda de venatione tantum, &c. & habuerunt in boſcis ſuis de Semere forgeas, & mineras, & amputâuunt, dederunt, & vendiderunt boſcum ſuum infra manerium prædictum ſine viſu foreſtariorum pro voluntate ſua, & fugarunt & ceperunt Vulpes, Lepores, Capriolos, &c. ſicut idem Henricus Percy ſuperius clamat. Which claime by preſcription, and found as is afore ſaid, the Juſtices doubted onely of two points. The firſt foraſmuch as the ſaid Mannor was within the limits of the Forreſt, it ſhould not onely be Contra aſſiſam Foreſtæ, for his Woodward to beare Bow and Arrowes, where by Law he ought to beare but an Hatchet and no Bow nor Arrowes within the Forreſt, but alſo de facili cedere poſſit in deſtructionem ferarum, &c. and therefore doubted whether it might be claimed by preſcription. Their ſecond doubt was concerning fugationem, & captionem Capriolorum in boſcis ſuis prædictis, eo quod eſt beſtia venationis Foreſtæ, & tranſgreſſores inde convicti finem facerent vi pro tranſgreſſione venationis, & for that difficultie the claime was adiourned into the Kings Bench. But of the other parts of the Preſcription no doubt at all was made: and the like had beene allowed in the ſame Eire, as in the caſe of Thomas Lord Wake of Lydell, and of Gilbert of Acton, in the ſame Eire, Rot. 37. and of others.

¶ *Il eſt proue per le pleader.* Note one of the beſt arguments or proofes in Law is drawne from the right entries or courſe of pleading, for the Law it ſelfe ſpeaketh by good pleading, and therefore Littleton here ſaith, It is proued by the pleading, &c. as if pleading were ipſius legis viua vox.

¶ *Entant que tiel title per preſcription fuit al common ley, &c.* Note all the preſcriptions that were limited from a certaine time were by Act of Parliament, as from the time of H. 1. which was the firſt time of limitation ſet downe by any Act of Parliament, and ſo from the reigne of R. 1. &c. But this preſcription of time out of memorie of man was (as Littleton here ſaith) at the Common Law, and limited to no time. Alſo here is implyed a maxime of the Law, viz. That whatſoeuer was at the Common Law, and is not ouſted or taken away by any Statute remaineth ſtill.

¶ *Common Ley.* The Law of England is diuided, as hath beene ſaid before, into three parts, the Common Law, which is the moſt generall and ancient Law of the Realme; of part whereof Littleton wrote; 2. Statutes or Acts of Parliament; and 3. particular Cuſtomes (whereof Littleton alſo maketh ſome mention) I ſay particular, for if it be the generall Cuſtome of the Realme, it is part of the Common Law.

The Common Law hath no controller in any part of it, but the high Court of Parliament, and if it be not abrogated or altered by Parliament, it remaines ſtill, as Littleton here ſaith, The Common Law appeareth in the Statute of Magna Charta and other ancient Statutes (which for the moſt part are affirmations of the Common Law) in the originall Writs, in iudiciall Records, and in our bookes of termes & yeares. Acts of Parliament appeare in the Rols of Parliament, and for the moſt part are in print. Particular cuſtomes are to be proued

Sect. 171.

¶ Ville. Villa quaſi vehilla quod in eam conuehantur fructus. And it is called Vicus, becauſe it is prope viam. Villa eſt ex pluribus manſionibus vicinata & colleta ex pluribus vicinis. Ita a Town be decayed ſo as no houſes remaine, yet it is a Towne in Law. And ſo if a Borough bee decayed, yet ſhall it ſend Burgeſſes to the Parliament, as old Salisbury and others doe. It cannot bee a Towne in Law, vnleſſe it hath, or in time paſt hath had a Church and celebration of Diuine Seruice, Sacraments and Burials: What alteration hath beene made in Townes, heare what a great Lawyer ſaith, In Anglia Villula tam parua inueniri non poterit, in qua non eſt Miles, Armiger, vel Paterfamilias, &c. magnis ditatus poſſeſſionibus, nec non liberi tenentes alii & valecti pluribus ſuis patrimoniis ſufficientes, &c. And it appeareth by Littleton, that a Towne is the Genus, and a Borough is the Species, for hee ſaith that euerie Borough is a Towne, but euerie Towne is not a Borough, Et ſub appellatione Villarum continentur Burgi & Ciuitates.

¶ Item, chescun Burgh eſt vn ville, mes nëy e conuerſo. Plus ſerra dit de cuſtome en le Tenure de villenage.

A Lſo euerie Borough is a Town but not *e conuerſo*: more ſhall bee ſaid of cuſtome in the tenure of villenage.

Vid. Linwood verbo vicus Bract. lib. 5. fol. 434. & lib. 4. fol. 211. Forteſcue cap. 29. 7 H. 6. fines leuie de terre. Br. 91.

34. H. 1. Quare imp. 187.

Forteſcue cap. 29.

Forteſcue cap. 24.

Bere-

Berewica, or Berewit in Domeſday ſignifieth a towne, Hæ Berewicæ pertinent ad Berchley. (Et ſic recitat plus quam viginti villas.) Domeſday. Glouc.

There be in England and Wales eight thouſand, eight hundred and three Townes, or thereabouts.

See more De villis, parochiis, & hamlettis, in the ancient Authors of the Law, and plentifully in our other bookes. But let vs now heare what Littleton ſaith. Bract. vbi ſup. Fle. lib. c.15. & lib.6.ca.49. Brit. fo.124. & 274. &c.

Chap.11. Villenage. Sect.172.

TEnure en villenage eſt plus proprement quant vn villein tient de ſon Sñr, a que il eſt villeine, certaine terres ou tenements ſolongz le cuſtome del manoꝛ, ou autrement a la volunt ſon Seignioꝛ, & de faire a ſon Seignioꝛ villein ſervice: Come de porter & de carier le fime le Sñr hoꝛs del City ou del Manoꝛ ſon Seignioꝛ ieſques a le terr ſon Seignioꝛ, en giſant ceo ſur le terre, & huiuſmodi. Et aſcuns franke homes teignont lour tenements ſolongz le cuſtome del certaine manoꝛs per tiels ſervices. Et lour tenure auſy eſt appel Tenure en Villenage, & vncoꝛe ils ne ſont pas villeines: Car nul tre tenus in Villenage, ou villeine terre, ne aſcun cuſtome ſurdant de la tre, ne vnques ferra

TEnure in villenage is moſt properly when a Villeine holdeth of his Lord, to whom he is a Villeine, certaine lands or tenements according to the Cuſtome of the Mannor, or otherwiſe at the will of his Lord, and to doe to his Lord villeine ſeruice: As to carrie and recarrie the dung of his Lord out of the Citie, or out of his Lords Mannor, vnto the Land of his Lord, and to ſpread the ſame vpon the Land, and ſuch like. And ſome free men hold their tenements according to the cuſtome of certaine Manors by ſuch ſeruices. And their tenure alſo is called Tenure in villenage, and yet they are not villeines. For no land holden in villenage or villeine land, nor any cuſtome ariſing out of the land ſhall euer make a free man villeine; but a

X 2

¶ *Tenure en villenage.* Villeine is the French word Villaine, and that A villa, quia villæ adſcriptus eſt, for they which are now called Villani, of ancient times were called Adſcripticii, and in the Common Law he is called Nativus, quia pro maiore parte natus eſt ſervus, and this is he which the Ciuilians call ſervus. (a) Theyn in the Saxon tongue is Liber, and Then, ſervus. Theme (ſometimes written Theame corruptly) is an old Saxon word, and ſignifieth [illegible] tem habendi in nat[illegible] villanos cum eorum [illegible] terris, bonis & catallis. [illegible] Teame ſometime corrupti[illegible] written Theam is of another ſignification, for it is alſo an old Saxon word, (b) and ſignifieth where a man cannot produce his warrant of that which he bought according to his Voucher.

Lib. Rub.76. & 77. Glanu.li.5 ca.2 & 2 &c. Vide Bract li.1 ca 6. &c. Brit fo.77 & 87.82.97 98. 125.126.147. Fleta.li.1.c.3. Flet.li.2 cap.44. Idem li. 4.cap.11 & 12. Mir.ca.2 ſect.18. Ockam. Money were called villani because they belonged ad caſtra Domini. others deriue it from re. the Bondmen in blood not belonging to any Manor, but such as sold themselues into Bondage. The offsprings of both sexes might not marry without leaue of their Lord. Hence it might be, were called Nabi Spelm. Gloss. of Law Words

(a) Fle.li.1.ca.24.

(b) Vide Lamb. inter Leges Sancti Edw. fo.132. nu.25.

¶ *Villenage.* Villenagium, (as in like caſes hath beene ſaid when the termination is nage,) is the ſeruice of a bondman. And yet a free man may doe the ſeruice of him that is bond. And therefore a Tenure in Villenage is twofold, one where the perſon of the Tenant is bond, and the tenure ſeruile, the other where the perſon is free, and the tenure ſeruile. (c) Serva terra liberos de ſanguine exiſtentes, villanos facere non poteſt. And therefore it is ſaid, (d) Eſt enim ratio & regula generalis in iſtis duobus caſibus, quod liber homo nihil libertatis propter perſonam

v. 66. a. & 109. a.

(c) Hil.29.E.1.coram Rege Ebor. in Theſaur.

(d) Brak.li.4.fo.[illegible]

personam suam liberam confert villenagio, nec liberum tenementum è contrario mutat statum aut conditionem villani. **And againe**, (e) Villenagium vel seruitium nihil detrahit libertati, habita tamen distinctione vtrum tales sint villani, & tenuerunt in villano socagio de dominico Domini Regis. **And againe**, (f) Tenementum non mutat statum liberi non magis quam serui, poterit enim liber homo tenere purum villenagium faciendo quicquid ad villanum pertinebit, & nihilominus liber erit, cum hoc faciat ratione villenagii, & non ratione personæ suæ, & ideo poterit quando voluerit villenagium deserere, & liber discedere nisi illaqueatus sit per vxorem natiuam adhoc faciendum ad quam ingressus fuit in villenagium, & quæ præstare poterit impedimentum, &c. **And againe** (g) Purum villenagium est, à quo præstatur seruitium incertum & indeterminatum vbi scire non poterit vespere, quale seruitium fieri debet mane, viz. vbi quis facere tenetur quicquid ei præceptum fuerit. **And another saith to the same intent**, Ceux ne scauoient le vespere de quoy ils seruer̃ en la Matin. (h) Fuerunt in Conquestu liberi homines qui libere tenuerunt tenementa sua per libera seruitia, [illegible] per liberas consuetudines, & cum per potentiores ejecti essent, postmodum reuersi receperunt [illegible]nementa sua tenenda in Villenagio, faciendo inde opera seruilia sed certa & nominata, &c. [illegible]nus liberi, quia licet faciunt opera seruilia, cum non faciunt ea ratione personarum, sed [illegible]tementorum, &c.

(e) Idem lib. 1. ca. 6. Brit. c. 31. & 66. Flet. li 1. ca. 3.

(f) Bract. fol. 26. 43. E. 3. 5. acc.

(g) Bract. li. 4. fo. 208. Britt. ca. 32.

(h) Bract. li. 1. fo. 7.

franke home villein. Mes vn villein puit faire franke terr̃ nesse villein terr̃ a son Sñr. Sicome lou vn villein purchase terr̃ en Fée simple, ou en Fée taile, le Seignior nel villein poet enter en la terre, & ouste le villein & ses heires a touts iours, & puis le Seignior (sil voloit) puit lesser mesme la terre, a le Villeine a tener en Villenage.

Villeine may make free land to bee Villeine land to his Lord. As where a Villeine purchaseth land in Fee simple, or in Fee taile, the Lord of the Villeine may enter into the land and oust the Villeine and his heires for ever: And after, the Lord (if hee will) may let the same land to the Villeine, to hold in Villenage.

How Villenage or seruitude began, and for what cause, it is said, (i) Ab homine, & pro [illegible]cio introducta est seruitus, sed libertas à Deo hominis est indita naturæ, quare ipso ab homine sublata semper redire gliscit, vt facit omne quod libertate naturali priuatur. **And another saith,** (k) **That the condition of Villeines from freedome vnto bondage, of ancient time grew by constitutions of Nations,** (l) Fiunt etiam serui liberi homines captiuitate de jure gentium; **And not by the law of Nature, as from the time of Noahs Floud forward, in which time all things were common to all, and free to all men alike, and liued vnder the Law Naturall, and by multiplication of people, and making proper and priuate those things that were common, arose battels. And then it was ordained by constitution of Nations, That none should kill another, but that he that was taken in battell, should remaine bond to his taker for euer, and to doe with him, and all that should come of him, his will and pleasure, as with his beast, or any other Chattell, to giue, or to sell, or to kill: And after it was ordained for the cruelnie of some Lords, That none should kill them, and that the life and members of them, as well as of free men, were in the hands and protection of Kings, and that he that killed his Villeine, should haue the same iudgement as if he had killed a Freeman. Thereupon they were called** Serui, quia seruabantur à Dominis & non occidebantur, & non à seruiendo. **He is called** Natiuus à nascendo, quia plerumque natus est seruus: **And he is called** Villanus, **for that he doth his Villeine seruice in** Villis.

(i) Fortesc. ca. 42.

(k) Bria. ca. 31.

(l) Bract. li. 1. ca. 6. Flet. li. 1. ca. 3. & ca. 5. Mir. cap. 2. sect. 18.

Est autem libertas naturalis facultas ejus quod cuique facere libet nisi quod de jure, aut vi prohibetur. Seruitus est constitutio de jure gentium qua quis Domino alieno contra naturam subjicitur. **And againe**, (m) Et tout soit que touts creatures duissont este franks solonque le Ley de nature, per constitution nequidant, & fait de homes sont auters creatures enseruies, sicome est dit beasts en Parkes, pissons en seruors, & oyseaux en cages.

Bract. li. 1. cap. 6. Britton ca. 31. & vbi supr. Fleta lib. 1. cap. 2. & 3.

(m) Mirror cap. 2. sect. 18.

(n) **This is assured, That bondage or seruitude was first inflicted for dishonouring of parents: for Cham the father of** Canaan (**of whom issued the Canaanites**) **seeing the nakednesse of his father Noah, and shewing it in derision to his brethren, was therefore punished in his sonne Canaan, with bondage. And herewith agreeth the Diuine,** Ante vini inuentionem inculta libertas: non esset hodie seruitus si ebrietas non fuisset.

(n) Mirror cap. 2. sect. 18. Genesis 9. vers. 10, 11, &c.

Ambros.

Hors del Citie ou del Manner, &c. This is falsely printed, for the originall

originall is, Hors del ſcite del Mannor, and ſo would it be amended at the Impreſſions of the Booke hereafter.

¶ *Et aſcuns frank homes teignont, &c.* This is apparant enough, eſpecially vpon that which hath beene ſaid. Mirror ca.2. Sect.18, Ace.

¶ *Ou vn Villeine purchaſe terre en fee ſimple.* Yet the Villeine may purchaſe ſome kinde of Inheritances in fee ſimple, which the Lord of the Villaine cannot haue. As if a villaine purchaſe a Common ſauns nomber, the Lord ſhall not haue it, for the Lord may ſurcharge the ſame, which ſhould be a preiudice to the Terre-tenant, and the ſame Law of a Corodie in certaine granted to a villeine, and ſuch like inheritances. And therefore Littleton materially ſaid, Purchaſe terre: when the Villeine hath an eſtate of any thing certaine, the Lord ſhall haue it as a rent granted to the Villeine, Commons certaine, Eſtouers certaine, and ſuch like. (o) But that which lyeth in action as a warranty made to the Villeine, his heires and aſſignes, the Lord ſhall not take aduantage of by Voucher, becauſe it is in lieu of an action, neither ſhall the Lord take aduantage of any Obligation or Couenant, or other thing in action made to the Villeine, becauſe they lye in priuity, and cannot be transferred to others. Mirror cap.2. Sect.18. 22. Aſſ.p.37. (o) Doct.& Stud. ca.43.

(p) If a man be Leſſee of a Villeine for life, for yeeres, or at will, and the Villeine purchaſeth lands in fee, if the Leſſee entreth into the lands, he ſhall hold the lands as a perquiſite to him and his heires for euer. But if a Biſhop hath a villeine in the right of his Biſhopricke, and he purchaſeth lands, and the Biſhop entreth, the Biſhop ſhall haue this perquiſite to him and his ſucceſſors, and not to him and his heires, for the Law reſpecteth the quality, and not the quantity of his eſtate. So if Executors haue a Villeine for yeeres, and the Villeine purchaſe lands in fee, and the Executors enter, they ſhall haue a fee ſimple, but it ſhall be aſſets. (p) L.5.E.4.61. 18.E.3. 29. 11.H.6 37. Broo. tit. Vil.70. v. poſt 124. a.

¶ *Fee taile.* By this it is apparant, that if lands be giuen to a Villeine, and to the heires of his body, the Lord may enter and put out the Villeine and the heires of his body, for, Quicquid acquiritur ſeruo acquiritur domino. And in this caſe the Lord gaines a fee ſimple determinable vpon the dying of the Villeine, without heire of his body, and the abſolute fee ſimple remaineth ſtill in the Donor. And if the Lord enter, and after infranchiſe the Donee, and after the Donee hath iſſue, yet that iſſue ſhall neuer haue remedy either by Formedon or entry, to recouer this land, by force of the Statute of Donis Conditionalibus, for that Statute giueth remedy to the iſſues of the Donee that haue capacity and power to take and retaine ſuch a gift. And the title of the Lord remaines as it did at the common Law for the Statute reſtraineth acts done only by the Tenant in taile. And ſo it is, if lands be giuen to an alien, and to the heires of his body, vpon office found, the land is ſeiſed for the King, afterwards the King makes the Alien a Denizen, who hath iſſue and dieth, the King ſhall detaine the Land againſt the iſſue. 15.E.4.9. b. Pl.Com.555. in Walſinghams caſe.

Sect. 173.

¶ Et nota, ſi feoffm̃t ſoit fait a certaine perſon ou perſons en fee all vſe dun villeine, ou ſi vn villeine, oue auters perſons ſoient enfeoffes al vſe le villeine, quel eſtate que le villeine ad en le vſe, en fee taile, pur terme de vie, ou dans, l' Seignior del villeine poit entrer en touts ceux terres & tenements, ſicome l' villein vſt eſte ſole ſeiſi del demeſn. Et ceſt per Leſtatute de Anno 19.H.7. cap.15.

And note, if a feoffement bee made to a certaine perſon or perſons in fee, to the vſe of a Villeine; or if a Villaine with other perſons, be infeoffed to the vſe of the villein, what eſtate ſoeuer that the Villeine hath in the vſe, in fee taile, for terme of life or yeeres, the Lord of the villein may enter into all thoſe lands and tenements, as if the villein had beene ſole ſeiſed of the demeſne. And this is giuen by the ſtatute of *Anno* 19.*H.*7.*ca.*15.

¶ This is an addition to Littleton, and the Statute of 19. H.7. ca. 15. therein mentioned, for the cauſe that hath beene aforeſaid, hath loſt his force.

Sect. 174.

¶ *A paier vn fine pur le mariage, &c.*

(q) And this villeine and ſeruile Tenure is called in old bookes Marchetum, or merchet. Marchetum verò pro filia dare non competit libero homini inter alia propter liberi ſanguinis priuilegium, &c. And this is true De Communi jure, ſed modus & conuentio vincunt legem. And as Littleton here ſaith, it is the folly of ſuch a freeman to take ſuch Manors, Lands or Tenements, to hold of the Lord by ſuch bondage. And yet this doth not make ſuch a freeman a villeine, (r) Quia huiuſmodi præſtationes fiunt ratione tenementi, & non ratione perſonæ in donatione comprehenſæ & reſeruat', non enim vnum & idem eſt, ſed longe aliud, tenere libere, & per liberum ſeruitium, &c. for the ſignification of this word, vide Sect. 194. 74. 441.

(q) 15. E. 3 tit. aid. 33. Bracton lib. 2. fo. 26. Mirror ca. 2. Sect. 18.

See more of this after in this Chapter. Sect. 194.

(r) Fleta lib. 3. cap. 13. Mir. cap. 2. Sect. 18.

¶ Mes ſi aſcun franke home voile prender aſcun tres ou tenements a tener de ſon Sñr p tiel villeine ſeruice, s. a payer vn fine a luy pur le mariage de ſes fits ou files, donq̄ il paiera tiel fine pur le mariage, & nient obſtant que il eſt le folie de tiel frank home de prender en tiel forin terres ou tenements a tener de le ſeignior per tiel bondage, vncore ceo ne fait le franke home villeine.

BVt if a Free-man wil take any lands or tenements to hold of his Lord by ſuch villeine ſeruice, *viz.* to pay a fine to him for the marriage of his ſonnes or daughters, then he ſhall pay ſuch fine for the marriage, yet notwithſtanding though it be the folly of ſuch free-man to take in ſuch forme lands or tenements to hold of the Lord by ſuch bondage, yet this maketh not the Free-man a villeine.

Sect. 175.

¶ *Heſcun villeine ou eſt villein per title de preſcription, &c.*

Lib. Rub. cap. 76. 77. Bracton lib. 1. cap. 6. Bract. fol. 77.

Euery villeine is either by preſcription or confeſſion, Seruí autem naſcuntur aut fiunt. By preſcription, either regardant to a Manor, &c. or in groſſe. In groſſe either by preſcription or by granting away a villeine that is regardant or by confeſſion. (ſ) Fit etiam ſeruus liber homo per confeſſionem in curia Regis fact'.

(ſ) Bract. lib. 1. cap. 6. Fleta lib. 1. cap. 3. 8. Aſſ. p. 13. 11. Aſſ. 12. 24. Aſſ. 1. 73. Aſſ. 1. 17. E. 3. 78. 79. 27. E. 3. 89. 18. E. 4. 25. 27. H. 8. 7. b. Le ſtatute de 17. E. 3. c. 17.

¶ Item cheſcun villeine, ou eſt vn villeine p title de preſcription, ceſtaſcauoir, q̄ il & ſes auncetors ont eſte villeins ō temps dont memorie ne curt, ou il eſt villein per ſon confeſſion demeine en court de Recor.

ALſo euery villeine is either a villeine by title of Preſcription, to wit, that he and his Anceſtors haue beene villeines time out of minde of man, or hee is a villeine by his owne confeſſion in a Court of record.

¶ *En Court de Record.* Record is deriued of the Latine word Recordor, that is to keepe in minde as the Poet ſaith, Si rite audita recordor. And therefore a Record or Inrolment is a memoriall or monument of ſo high a nature, (t) as it importeth in it ſelfe ſuch an abſolute verity, as if it be pleaded, that there is no ſuch Record, it ſhall not receiue any triall by witneſſe, iury, or otherwiſe, but onely by it ſelfe. (u) And euery Court of Record is the Kings Court, albeit another may haue the profit, wherein if the Iudges doe erre, a Writ of error doth lye. (x) But the County Court, the Hundred Court, the Court Baron, and ſuch like are no Courts of Record, and therefore the proceedings therein may be denied, and tried by Iury, and vpon their iudgements a Writ of error lieth not, but a Writ of falſe iudge-

(t) 17. E. 3. 23. 11. H. 4. 26. 37. H. 6. 21. Dier Mich. 7. & 8. Eliz. 242. Pl. Com. 79. &c.
(u) Glanuil. lib. 9. cap. 8. Bracton lib. 3. fo. 156. Britton fol. 121.
(x) Lib. 6. fo 11. & 12. in Ieniemans caſe.

ment

ment for that they are no courts of record, because they cannot hold plea of debt or trespasse if the debt or damages doe amount to 40. shillings, or of any trespasse Vi & armis.

Monumenta quæ nos recorda vocamus sunt veritatis & vetustatis vestigia.

Sect. 176.

¶ Mes si franke home ad diuers issues, & puis il confesse luy mesme villein a vn auter en Court de Record, uncore les issues que il auera deuant le confes. sont franks, mes les issues que il auera apres le confession serront villeines.

But if a Free-man hath diuers issues, and afterwards he confesseth himselfe to bee a villaine to another in a Court of Record, yet those issues which he hath before the confession are free, but the issues which hee shall haue after the confession shall be villaines.

This is so euident as it needeth no explication.

Sect. 177.

¶ Item, si le villein purchase fee & alien la terre a vn auter deuant que le Seignior enter, donques le Seignior ne poit enter, car il serra adiudge son follie q̄ il nentra pas quant la terre fuit en le maine le villeine. Et issint est dez biens si le villeine achate biens, & eux vend ou done a vn auter deuant que le Seignior seisist les biens, adonques le Seignior ne poit eux seiser. Mes si le seignior deuant aseun tiel vender ou done, vient deins la ville la ou tiels biens sont, & la ouertment enter les vicines claima les biens & seisist parcel

Also if a Villaine purchase land and alien the land to another, before that the Lord enter, then the Lord cannot enter, for it shall bee adiudged his folly, that he did not enter when the land was in the hands of the Villaine. And so it is of goods: If the villaine buy goods and sell or giue them to another, before the Lord seiseth them, then the Lord may not seise the same: but if the Lord before any such sale or gift, commeth into the Towne where such goods be, and there openly amongst the neighbors claime the goods, and seise part of the goods in the name of seisin

¶ In this case before the Lord doth enter, hee hath neither Ius in re nec ius ad rem but only a possibility of an estate, which estate hee must gaine by his entry, and therefore if the villaine doth by way of preuention alien before the Lord doth enter, the Lord is barred of the possibility which he had to the land for euer. (a) Si autem seruus vendiderit feodum quod sibi & hæredibus perquisiuerit antequam Dominus seisinam inde ceperit, valet donatio, & Dominus sibi ipsi imputet, quod tantum expectauit. But (b) if the Villaine of the King purchaseth land & alieneth before the King (vpon an office found for him) doth enter, yet the King after office found shall haue the land, Quia nullum tempus occurrit Regi, as Littleton himselfe saith in the next section. And yet after office found the King shall not haue the meane profits, because the title is by the seisure.

(a) Fleta lib. 3. ca. 13. Britton fol. 98. a. 19. E. 2. Dower 17.

(b) 35. H. 3. tit. villen. 22. 9. H. 6. 21. per Babington. 12. H. 7. 12.

¶ *Purchase terre.* The like law is of Seigneries, Aduowsons, Reuersions, Remainders, Rents, Commons certaine, and such like certaine Inheritances, wherein the Villaine hath

hath any eſtate or intereſt. If the Villaine purchaſe Land either in Feeſimple, Feetaile, or for life, if the villaine doth alien before the Lord doth enter, he doth preuent the Lord. But yet the iſſue of the villaine ſhall recouer the land intailed in a Formedon, and then the Lord may enter.

des biens en noſme de ſeiſin de touts les biens q̄ le villeine ad ou auer poit, &c. Ceo eſt dit bon ſeiſin en ley, & le occupation que le villeine ad apres tiel claime en ꝑz biens, ſerra pris en le droit le Seignior.

of all the goods which the Villaine hath or may haue, &c. this is a good ſeiſin in law, and the occupation which the Villaine hath after ſuch claime in the goods ſhall be taken in the right of the Lord.

¶ *Alien la terre.* Alien commeth of the Verbe Alienare, id eſt, alienum facere velex noſtro domino in alienum transferre, ſiue rem aliquam in Dominium alterius transferre. If a freeman hath iſſue, and afterward by confeſſion becommeth bond, and purchaſe Lands in fee, and before the Lord enter hee dieth ſeiſed, and the Land deſcends to his iſſue which is free, in this caſe the Lord ſhall not enter vpon the heire, and yet this is a deſcent and no alienation. The like Law it is if the land ſo purchaſed by the villaine doth eſcheate to the Lord of the Fee before any entry made by the Lord of the villaine: ſo as the Act of the Law, that is, the deſcent or eſcheat may as well preuent the Lord of his entry, as the act of the party by alienation.

If a villaine be diſſeiſed before the Lord doth enter, the Lord may enter into the Land in the name of the villaine, and thereby gaine the Inheritance of the land, but if there be a deſcent caſt, ſo as the entry of the villaine be taken away, then the villaine muſt recontinue the eſtate of the land by iudgement and execution, before the Lord of the villaine can enter, and this word alien doth not only extend to alienations of Land in deed, but alſo to alienations in Law, as if the villaine purchaſe land and dieth without heire, and the land eſcheate, or if there be a recouery againſt the Villaine in a Ceſſauit or the like.

¶ *Et iſſint eſt des biens, &c.* Biens, bona, includes all chattels aſwell reall as perſonall. Chattels is a French word, and ſignifies goods, which by a word of Art we call Catalla. Now goods or chattels are either perſonall or reall, perſonall as horſe and other beaſts, houſholdſtuffe, bowes, weapons, and ſuch like, called perſonall becauſe for the moſt part they belong to the perſon of a man, or elſe for that they are to be recouered by perſonall actions. Reall, becauſe they concerne the reality, as tearmes for yeares of Lands or Tenements, Wardſhips, the intereſt of Tenant by Statute Staple, by Statute Merchant, by Elegit and ſuch like.

Bona diuiduntur in mobilia & immobilia, mobilia rurſum diuiduntur in ea quæ ſe mouent, & quæ ab aliis mouentur: but by the Common law, no eſtate of inheritance or free-hold is comprehended vnder theſe words bona or catalla. And it is to be obſerued, that as the title of the Lord to his villaines lands beginneth by his entry, ſo his title to the goods beginneth by the ſeiſure of them. And here againe it is to be obſerued, that where our Author in this branch concerning goods, vſeth theſe words (ſell or giue) that the ſame extendeth as well to gifts in Law as gifts in Deed. And therefore if a neife hath goods, and taketh Baron, by this gift in Law by force of the marriage, the Lord is barred. And ſo it is if a villaine make his Executors and dieth, by this gift in Law the Lord is barred as ſhall be ſaid hereafter.

3. H. 4. 15. 46. E. 3. barre 217. Doct. & Stud. cap. 43. fol. 139. 22. E. 6. Baldwin Fremls caſe.

¶ *Et claime les biens & ſeiſiſt parcel des biens.* For a claime onely of the goods of the Villaine is not ſufficient in Law, but he muſt ſeiſe ſome part in the name of all the reſidue, as here it appeareth, or that the goods be within the view of the Lord, for the claime and his view amount to a ſeiſure, as the claime of a Ward being preſent by word is a ſufficient ſeiſure, albeit the Gardian layeth no hands of him. See hereafter Sect. 321. And ſo note a diuerſity betweene a claime of Lands or Tenements, and goods. (c) In anaction of treſpaſſe or detinue brought by the villaine, a releaſe made to the defendant by the Lord is a good barre, for that amounts to a ſeiſure and grant. If the Villaine doth buy goods and make his Executors, and dieth before the Lord doth ſeize them, the Executors ſhall detaine them againſt the Lord of the Villaine.

(c) 18. H. 6. 23. b. pl. Acough. 3. H. 4. 16. 46. E. 3. barre 217.

¶ *Ad ou auer poet, &c.* Here (&c.) doth imply an excellent point of learning, for that ſuch a claime doth not only veſt the goods which the villaine then hath, but alſo which he after that ſhall acquire and get. But otherwiſe it is of lands of freehold or inheritance, for there ſuch a generall entry or claime extends onely to the lands the villaine hath at that

time

time, and not to any other which he ſhall purchaſe after, as by our Author in this Section may euidently be collected.

Sect. 178.

¶ Mes ſi le Roy ad vn villeine que purchaſe terre, & alien deuant que le Roy entra, vncore le Roy poit enter en que maines que la terre deuienoya. Ou ſi le villein achata biens, & eux vendiſt deuant que le Roy ſeiſiſt les biens, vncore le Roy poit ſeiſer les biens en que maines que les biens ſont, Quia nullum tempus occurrit Regi.

BUt if the king hath a Villeine who purchaſes Land, and alien it before the King enter, yet the King may enter into whoſe hands ſoeuer the land ſhall come. Or if the villeine buyeth goods and ſell them before that the King ſeizeth them, yet the King may ſeize theſe goods in whoſe hands ſoeuer they bee. Becauſe *Nullum tempus occurrit Regi.*

¶ *Si le roy ad villein &c.* This is euident vpon that which hath beene ſaid before. 118. a. Vide ſect. 125. Vid. Stanford prær. f. 32. c.

¶ *Ouſi tiel villeine achata biens, &c.* If the Kings Villeine acquire any goods or chattels, the properties of them is in the King before any ſeiſure or office, and it is well ſaid of an ancient Author, (d) Al roy quant al droit de la corone ou a franch eſtate ne poet nul temps occurre, and another (e) ſpeaking in the perſon of the King ſaith, Nul temps neſt limit quant a mes droits. 35. E. 3. tit. villenage 22. (d) Mirror cap. 3. (e) Britton, fol. 88. Bract. lib. 1. quæres Domini poſſint.

Sect. 179.

¶ Item ſi home leſſa certaine terre a vn auter per terme de vie ſauant le reuerſion a luy, & vn villein purchaſe del leſſor le reuerſion: en ceſt cas il ſemble q̄ le Seignior del villeine poit maintenant veñ a la terre, & claime le reuerſion come le Seignior le dit villeine, & per cel claime le reuerſion eſt maintenant en luy. Car en auter forme il ne poit bener a le reuerſion. Car il ne poit enter ſur le tenant a terme de vie. Et ſi poit demurrer tanque apres le mort le tenant a terme

ALſo if a man let certaine land to another for terme of life ſauing to himſelfe the reuerſion, and a villeine purchaſe of the leſſor the reuerſion: In this caſe it ſeemeth that the Lord of the villeine may preſently come to the land and claime the reuerſion as the Lord of the ſaid villeine, and by this claime the reuerſion is forthwith in him. For in other forme or manner he cannot come to the reuerſion. For hee cannot enter vpon the tenant for life. And if hee ſhould ſtay vntill after the death of the Tenant for

¶ *Poit maintenant uener a la terre.* For hee cannot claime the reuerſion but vpon the Land, and hee by his comming vpon the Land for that purpoſe is no treſpaſſor, becauſe the Law giueth him power to claime the reuerſion, leſt hee ſhould bee preuented, and claime hee cannot vnleſſe hee commeth to the Land. So likewiſe if the villeine purchaſe a Seigniorie, Rent, Common, or any other freehold or inheritance out of any Lands or Tenements of another, the

the Lord may lawfully come to the land to make his claime to the seigniorie, rent or other profit out of the land. But if the villeine purchase a Seigniorie or a Rent, Common, or

de vie, donques per cas il viendra trope tarde. Car perauenture le villeine voile granter ou aliene le reuersion a vn auter en le vie le tenant a terme de vie, &c.

life, then perchance hee should come too late. For peraduenture the villeine will grant or alien the reuersion to another in the life of the Tenant for life, &c.

Vide 41. E 3. tit. Audita querela 18. 42. H. 4. tit. Execution 28. F. N. B. 104. 1. H. 7. 15. b.

other inheritance issuing out of the Land of the Lord himselfe, it is said that the Seigniorie, Rent, Common, or such other Inheritance is extinguished in the Lords possession without any claime.

¶ *Grant.* Here must be intended an Attornement, for after the grant and before Attornement the Lord may not claime the reuersion.

¶ *En la vie del tenant per vie, &c.* Here by (&c.) is included Tenant in taile, tenant per auter vie, tenant by Statute Merchant, Staple, Elegit, and for yeares, for during all these estates the Lord may claime the Reuersion, as well as in case of the Tenant for life.

Sect. 180.

¶ A *Duowson.* Aduocatio so called because the right of presenting to the Church was first gained by such as were Founders, Benefactors, or Maintainers of the Church, viz. ratione fundationis, as where the Ancestor was founder of the Church, or ratione donationis, where hee endowed the Church, or ratione fundi, as where hee gaue the soile whereupon the Church was built, and therefore they were called Aduocati: they were also called Patroni, and thereupon the Aduowson is called Ius Patronatus. And in one word, Aduowson of a Church is the right of presentation or collation to the Church. Aduocatus est ad quem pertinet jus aduocationis alicujus Ecclesiæ, vt Ecclesiam nomine proprio non alieno possit præsentare. Euerie Church is either presentative, collative, donative or elective. Vide Section 645. 648.

15. H. 14. b.

Fleta lib 5. cap. 14.

¶ En Mesme le maner est, lou vn villeine p̄chase vn Aduowson dun Esgl' plein dun incumbent, le Seignior del villein poit vener al dit Esglise, & claim le dit aduowson, & per cel claim laduowson est en luy. Car sil voit attendre tanqz apres le mort lincumbent, & adonque a presenter son clerke a le dit Esglise, donque en le meane temps le villeine poit alener le aduowson, & issint ouste le Seignior de son presentment.

In the same manner it is, where a villeine purchases an Aduowson of a Church full of an Incumbent, the Lord of the villeine may come to the said Church, and claime the said Aduowson, and by this claime the Aduowson is in him. For if hee will attend till after the death of the Incumbent, and then to present his Clerke to the sayd Church, then in the meane time, the villein may alien the Aduowson, & so oust the Lord of his presentment.

24. E. 3. 30. 25. E. 3. 47. 38. E. 3. 9. 44. E. 3. 3. 9. H. 6. 31. 22. H. 6. 27. 21. E. 4. 84. b. Vide Sect. 648.

¶ *Plein dun incumbent.* If the Church be presentative, the Church is full by admission and Institution against any common person, but against the King it is not full vntill induction.

10. H. 6. 7.

¶ *Incumbent,* Commeth of the verbe incumbo, that is, to be diligently resident, id est, obnixe operam dare, and when it is written Encumbent it is falsely written, for it ought to be Incumbent, as Littleton doth here. And therefore the Law doth intend him to be resident on his Benefice.

¶ Le

¶ *Le Seignior del villeine poit vener al Eglise & claime le dit aduowson.* Note albeit the Aduowson is a thing incorporeall, and not visible, yet because the principall parte of the presentee of the Patron is to bee done in the Church, the claime of the Lord of the Villeine must be made there, and by that claime the inheritance of the Aduowson shall bee vested in the Lord, for euerie claime or demand to deuest any estate or interest must be made in that place which is most apt for that purpose.

¶ *Apres la mort del Incumbent.* Note, a Church presentatiue may become void fiue manner of wayes, viz. by death, whereof Littleton here speaketh. 2. By creation. 3. By resignation. 4. By deprivation. 5. By cession, as by taking a Benefice incompatible. Doct. & Stud lib. 2. cap. 31. 5. E. 3. 180. 10. E. 3. 482. 25. E. 3. 49. 9. E. 3. 462. 11. H. 4. 37. 59. & 76. 41. E. 3. 5. F. N. B. 31. 32.

¶ *Et donques a presenter son Clerke al dit Eglise, &c.* A presentation is deriued à præsentando, quia præsentare nihil aliud est quam præsto dare, seu offerre. And Littleton here briefly expresseth the effect of a presentation, for it is the act of the Patron offering his Clerke to the Bishop of that Dioceese to bee instituted to such a Church in these or the like words directed to the Bishop, Præsento vobis A. B. Clericum meum ad Ecclesiam de Dale, &c. This may be done as well by word, as by writing, and if it be by writing it is no Deed, for the presentation is of the Clerke, and the direction to the Bishop, so as this writing is in nature of a Letter to the Bishop: and this is the reason that the King himselfe may present by word, as elsewhere is said. A Villeine at this day purchaseth an Aduowson in fee, the Church becomes void, the Lord for 100. pound giuen by A. B. Clerke presents him to the Church, and his Clerke is admitted, instituted, and inducted, yet this gaineth not the Aduowson to the Lord. (d) And so it is in that case if any on the behalfe of A. B. had giuen or contracted with the Lord in consideration of any valuable thing to present A. B. to the said Church, albeit it had beene without the consent or knowledge of A. B. yet it should not haue vested the Aduowson in the Lord. But this was not Law when Littleton wrote. (e) But now by the Statute of 31. Eliz. the presentation, admission, institution, and induction in both the said cases and in the like are made void, where before the said Statute they were but voidable by deprivation. And if a man present by vsurpation to a Benefice by reason of any corrupt contract, agreement, &c. that presentation, and the institution and induction thereupon are void, for that act extends to all Patrons as well by wrong as by right; but where any presents by vsurpation, the rightfull Patron and not the King shall present, for otherwise euerie rightfull Patron may lose his presentation. And such an Incumbent that commeth in by reason of any such corrupt agreement is so absolutely disabled for euer after to be presented to that Church, as the King himselfe, to whom the Law giueth the title of Presentation in that case, cannot present him againe to that Church, for the Act being made for suppression of Symony, and such corrupt agreements, so bindes the King in that case, as hee cannot present him that the Law hath disabled, for the words of the Act be, Shall thereupon and from thenceforth bee adjudged a disabled person in Law to haue or enioy the same Benefice. (f) And the partie being disabled by the Act of Parliament (which being an absolute and direct Law) cannot bee dispensed withall by any grant, &c. with a Non obstante, as it may be, when any thing is prohibited Sub modo, as vpon a penaltie giuen to the King. And the said Act doth not only extend to Benefices with cure, but to Dignities, Prebends, and all other Ecclesiasticall liuings.

(d) Adiudge in Communi Banco. Mich. 41. & 42. Eliz. inter Baker & Rogers.

(e) Adiudged in the Kings Bench, Mich. 13. Ia. in a Quar. imp. brought by the King against the Bishop of Norwich, Thomas Cole & Robert Socker Clerke for the Vicarage of Hauerell in Suff.

(f) Pl. Com. 502. 27. H. 8. 2. H. 7. 6. 11. H. 7. 11. 13. H. 7. 8. b. 11. H. 4. 76. 5. E. 3. 19. F. N. B. 211. E.

¶ *Clerke.* Clericus is twofold, Ecclesiasticus (which Littleton here intendeth) and hee is either secular, or regular, so called because he is Servus & hæreditas domini: and Laicus, and in this sense is signified a Pen-man, who getteth his liuing in some Court or otherwise by the vse of his pen. 4. H. 4. ca. 12.

Note, if the Church becommeth void, albeit the present auoidance bee not by Law grantable ouer, yet may the Lord of the Villeine present in his owne name, and thereby gaine the inheritance of the Aduowson to him and his heires, for albeit it be not grantable ouer, yet it is not meerly a Chose in action, (g) for if a Feme couert be seised of an Aduowson, and the Church becommeth void, and the wife dieth, the husband shall present to the Aduowson, (h) but otherwise it is of a bond made to the wife, because that is meerly in action.

(g) 14. H. 4. 12. 38. E. 3. 35. 13 E. 3. Quare imp. 57.

(h) 43. E. 3. 10. 32. E. 3. 5. 4. H. 6. 5.

Sect. 181.

¶ Item il y ad villeine regarde, & villeine en gros.

Also there is a villeine regardant, and a villeine in grosse.

¶ *Villein regardant.* Hee is called regardant to the Mannour, because hee hath the charge 8. H. 7. 3.

charge to doe all base or villeinous seruices within the same, and to gard and keepe the same from all filthy or loathsome things that might annoy it: and his seruice is not certaine, but hee must haue regard to that which is commanded vnto him. And thereupon hee is called Regardant, A quo præstandum seruitium incertum & indeterminatum, vbi scire non poterit vespere, quale seruitium fieri debet mane, viz. vbi quis facere tenetur quicquid ei præceptum fuerit, As before hath beene obserued. And Littleton saith hereafter, That no other thing is said to bee regardant, but onely a Villeine: (i) Yet in old Bookes it was sometimes applyed to Seruices.

Brac. li. 2. fo. 26. Mir. ca. 2. sect. 18.

Vide sect. 184.

(i) 20. E. 3. tit. Issue 30.

¶ *In grosse:* Is that which belongs to the person of the Lord, and belongeth not to any Mannor, Lands, &c.

villeine regardant est sicome home est seisi dun Mann a que vn villeine est regardant, & celuy que est seisie del dit mann, ou ceux q̄ estat il ad en mesm̄ le Mannor ount este seisies de le dit villein & de ses Auncestors, come villeins & niefs regardants a mesme le mannor de temps dont memorie ne curt. Et villeine en grosse est, lou vn home seisie dun Mannor a que vn villeine est regardant, & il graunt mesm̄ le villein p̄ son fait a vn aut̄, donq̄s il est villein en grosse, & nemy regardant.

A villein regardant is, as if a man be seised of a Mannor, to which a villeine is regardant, and he which is seised of the said Mannor, or they whose estate hee hath in the same Mannor, haue beene seised of the villeine & of his Ancestors as villeines and niefs regardant to the same mannor time out of memory of man. And villeine in grosse is, where a man seised of a Mannor whereunto a Villeine is regardant, and granteth the same villeine by his Deed to another, then hee is a villeine in grosse and not regardant.

Sect. 182.

Mir. ca. 2. sect. 18.

¶ This needeth no explanation, but to adde the saying of an ancient Author, Servage de home est subiection, issuant de cy grand antiquitie, que nul franke cep poet estre troue per humane remembrance.

¶ Item si vn home & ses Ancestors que hēre il est ount este seisies dun villein & des ses ancestors, come des Villeins en grosse, de temps dont memorie ne curt, tiels sont Villeines en grosse.

Also if a man & his Ancestours whose heire hee is, haue beene seised of a villeine, and of his Ancestours as of villeines in Grosse, time out of memorie of man, These are villeines in Grosse.

Sect. 183.

Vid. sect. 442. 194. 17474.
(l) Bract. li. 5. tract. 5. c. 28.

(m) Glan. li. 12.

¶ *Or fine.* In Latine, Finis. (l) Ideo dicitur finalis concordia, quia imponit finem litibus, & est exceptio peremptoria. (m) Finis est amicabilis compositio est finalis concordia ex consensu & licentia

¶ Et hic nota, que tiels choses q̄ ne poient este grants, ne aliens sans fait ou fine, home que voile auer tiels choses per

And here note, that such things which cannot be granted nor aliened without Deed or Fine, a man which will haue

per

preſcription, ne poet autrement preſcriber forſque en luy, & en ſes Auncеſtors que heire il eſt & nemy per ceux parols, en luy & en ceux que eſtate il ad, p̄ ceo q̄ il ne poet auer lour eſtate ſans fait ou auter eſcripture, le quel couient deſte monſtre a le court, ſi il voile auer aſcun aduantage de ceo. Et pur ceo que le grant & alienation dun villeine en gros ne gift ſ̄as fait ou auc̄ eſcriptur̄, hō ne poit p̄ſcriber ē vn villein ē gros ſ̄as mō̄ſtr̄as deſcripture, ſinon en ſoy meſme que claime le villeine, & en ſes Anceſtors que heire il eſt, Mes de tiels choſes que ſont regardants ou appendants a vn Mannor, ou a auters terres & Tenements home poet preſcriber que il & ceux que eſtate il ad, queux fueront ſeiſies de le Mannor, ou de tiels Terres & Tenements, &c. ont eſte ſeiſies de tiels choſes come regardants ou appendants a le Manor, ou a tiels tres & tenements, de temps dont memorie, &c. Et la cauſe eſt, pur ceo que tiel Mannor,

ſuch things by preſcription, cānot otherwiſe preſcribe, but in him and in his Aunceſtors whoſe heire hee is, and not by theſe words, In him & them whoſe eſtate hee hath, for that he cannot haue their eſtate without Deed or other Writing, the which ought to bee ſhewed to the Court, if hee will take any aduantage of it. And becauſe the grant and alienation of a villeine in groſſe, lyeth not without Deed or other Writing, a man cannot preſcribe in a villein in groſſe, without ſhewing forth a Writing, but in himſelfe which claims the Villeine, and in his Aunceſtours whoſe heire hee is. But of ſuch things which are regardant or appending to a Mannour, or to other lands and tenements, a man may preſcribe, that hee and they whoſe eſtate hee hath who were ſeiſed of the Mannor, or of ſuch lands and Tenements, &c. haue beene ſeiſed of thoſe things, as regardant or appendant to the Manor, or to ſuch lands and tenements time out of mind of man: And the

Domini Regis, vel eius Iuſticiariorum. (n) Talis concordia finalis dicitur eo quod finem imponit negotio, adeo vt neutra pars litigant̄ ab eo de cætero poterit recedere. Of the ſeuerall parts of a Fine, and many incidents to the ſame, you ſhall read in my Reports.

(n) Lib. 9 cap. 3 Statut de Modo leuandi Fines. Pl. Com 357.

Lib 5. fol. 38. Teyer caſe.

¶ *Que eſtate, &c.* Quorum ſtatū, as much to ſay, whoſe eſtate he hath. Here Littleton declareth one excellent rule, (o) That a man cannot preſcribe in anything by a Que eſtate, that lyeth in grant, and cannot paſſe without Deed or Fine, but in him and his Anceſtors hee may, becauſe he comes in by deſcent without any conueyance. Neither can a man plead a Que eſtate in himſelfe, of any thing that cannot paſſe without Deed, (p) but in another he may, as in barre of an auowrie, the Plaintife may plead a Que eſtate in the ſeigniorie in the auowant. But Littletons words are to bee obſerued, (Home que voile auer tiels choſes per preſcription) Therefore (q) when a thing that lieth in grant is but a conueyance to the thing claimed by preſcription, there a Que eſtate may bee alleaged of a thing that lyeth in grant as a man may preſcribe, that he and his Anceſtors, and all thoſe whoſe eſtate he hath in an Hundred, haue time out of minde, &c. had a Leet, &c. this is good, &c.

(o) 22. Aſſ 53. 23 Aſſ 6. 12 H. 7, 16, 18.

(p) 39. H 6, 8. 18. E. 4. 23.

(q) 11. H. 4, 89. 19. R. 2. Action ſur le caſe 51. 13. E. 3. Br. 674.

(r) Regularly the Plaintife ſhall not intitle him by a Que eſtate, but hee muſt ſhew how he came by it; but after Auowrie made, the Plaintife ſhall plead a Que eſtate, becauſe he is now become as a Defendant.

(r) 9. E. 4. 3 b. 29. Aſſ. 19. 2. H. 6. 10. 48. E 3 tit. 3 & 3. H. 28.

(f) A man may plead a Que eſtate of a tenancie in taile or of an eſtate for life, ſo as he auerreth the life of them, but he cannot plead a Que eſtate of a leaſe for yeares, or at will.

(f) 41. Aſſ. 2. 40. Aſſ. 28. 8. H. 4. 20. 15. E. 4. 1. 5. H. 7. 39. 18. E. 4. 10. 7. E. 6 tit. Que eſtate. Br. 31. 27. H. 6. 3. 7. El. Dyer 238.

(t) A Diſſeiſor, Abatour, Intruder, Recouerour, or any other that commeth in̄ poſt, ſhall

(t) 22. H. 6. 34. 6. E. 4. 20. 31. H. 8. Que eſtate Br. 48. 39. H 6. 14. 9. H. 6. Eſtop. 25.

shall plead a Que estate.

(u) 11.H.4 81.27.H.6.32. 9 E.4.3. 2 E 6. tit. Que estate 8. 1. E.6. Que estate. Br. 49.

(u) A Que estate must bee alleaged in the Tenant or Defendant himselfe, and not in one in the meane conueyance from whom he claimeth and yet some bookes be to the contrarie.

ou terres & tenements poyent passer per alienation sans fait, &c.

reason is for that such mannor or lands and tenements may passe by alienation without deed, &c.

¶ *Le quel couient destre monstre al Court.* The reason wherefore a Deed that is pleaded ought to be shewed to the Court is, because euerie deed must proue it selfe to haue sufficient words in Law, whereof the Court must adiudge, and also to be proued by others as by witnesses or other proofe if the Deed be denied, which is matter of fact.

¶ *Per alienation sauns fait, &c.* Here by (&c.) is implyed, that whatsoeuer passeth by Liuerie of seisin either in Deed or in Law, may passe without Deed, and not onely the Rents and Seruices parcell of the Mannor shall with the demeanes as the more principall and worthy passe by Liuerie without Deed, but all things regardant, appendant, and appurtenant to the Mannor as incidents or adiuncts to the same shall together with the Mannor passe without Deed, all which, as here it appeareth, and elsewhere is said, shall passe without saying Cum pertinentiis.

Sect. 184.

¶ *Regardant*: Vide Sect.181.

¶ *Appendants.* Appendant is any inheritance belonging to another that is superiour or more worthy. In Law it is called Pertinens, quasi inuicem tenens, holding one another, a word indifferent both to things appendant, & things appurtenant, the qualitie and nature of the things doe make the difference; but regardant (as our Author saith) is only applyed to a villeine. (*) Appendants are euer by prescription, but appurtenants may be created in some cases at this day. As if a man at this day grant to a man and his heires common in such a more for his beasts leuant or couchant vpon his Mannor, or if he grant to another common of Estouers or Turbarie in Fee simple to be burnt or spent within his Mannor, by these grants these Commons are appurtenant to the Mannor, and shall passe by the grant thereof. In the Ciuill Law it is called Adjunctum.

Vide sect.1.
(*) 5.Ass.9. 8.H.7.4.5. 28.H.8. Dier 30.b. Pl. Com.381. F.N.B. fol.181.

¶ Et est ascauoir, que nul chose est nosme regardant a vn Mannor, &c. forsque villeine, mes certeine auters choses come aduowson & common d pasture, &c. sont nosmes appendants al Mannor ou al terres & tenements, &c.

And it is to be vnderstood that nothing is named regardant to a Mannor, &c. but a villeine, but certaine other things, as an aduowson, & common of Pasture, &c. are named appendant to the Mannor, or to the Lands and Tenements, &c.

(x) 43.Ass.p.10. 43.E.3.22.

(x) If A. be seised of a Mannor whereunto the franchise of waife and stray and such like are appendant, and the King purchaseth the Mannor with the appurtenances, now are the royall Franchises reunited to the Crowne, and not appendant to the Mannor, but if he grant the Mannor in as large and ample manner as A. had, &c. it is said that the Franchises shall be appendant (or rather appurtenant) to the Mannor.

(y) Hill & Granges case. Pl.Com.168.

Concerning things appendant & appurtenant, two things are implyed. (y) First that prescription (which regularly is the mother thereof) doth not make any thing appendant or appurtenant, vnlesse the thing appendant or appurtenant agree in qualitie & nature to the thing whereunto it is apendant or appurtenant, as a thing corporeall cannot properly be appendant to a thing corporeall, nor a thing incorporeall to a thing incorporeall. But things incorporeall which lye in grant, as Aduowsons, Villeines, Commons, and the like, may be appendant to things corporeall, as a mannor house or lands, or things corporeall to things incorporeall, as lands to an office. (z) But yet (as hath beene said) they must agree in nature and qualitie, for (a) common of Turbarie or of Estouers cannot be appendant or appurtenant to land, but to a house to be spent there. (b) Nor a Leet that is temporall, to a Church or Chappell which is Ecclesiasticall, Neither can a Nobleman, Esquire, &c. claime a seat in a Church by prescrip-

(z) 1.H.7.24. Pl.Com.169.
(a) 5.Ass 9.
(b) 10.E.3.5. 37.H.6.34. 20.H.8.4.lib.4.fol.36.37. in Tirringhams case.

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tion as appendant or belonging to land, but to a house, for that such a seat belongeth to the house in respect of the inhabitancie thereof, and therefore if the house be part of a Mannor, yet in that case he may claime the seat as appendant to the house for the reason afore said.

Secondly that nothing can be properly appendant or appurtenant to any thing unlesse the principall or superiour thing be of perpetuall subsistance and continuance, for example. An Aduowson, that is said to be appendant to a Mannor, is in rei veritate appendant to the Demesnes of the Mannor, which are of perpetuall subsistance and continuance, & not to Rents or services, which are subiect to extinguishment and destruction. 5.E 6.Dier 70.b.

An Aduowson is appendant to the Mannor of Dale, of which Mannor the Mannor of Sale is holden, the Mannor of Sale is made parcell of the Mannor of Dale by way of Escheat, the Aduowson is only appendant to the Mannor of Dale.

And where it is said that a chamber may be parcell of a Colledge, and passe by the name of the Colledge which may be extinguished, there he that hath the Colledge hath but his habitation in the chamber, as a Fellow of Trinitie College in Cambridge hath in his chamber, or as one that had a Colledge and a chamber in an house of Religion, he had but his habitation only. As for Offices of fee whereunto land may appertaine they are of perpetuall subsistance, either being in esse, or in that they are grantable ouer. 31.H.6.15.b.

Note that an Aduowson at one turne may be appendant, and at another turne in grosse, as if the Mannor be diuided betweene Coparceners, and euerie one hath a part of the Mannor without saying any thing of the Aduowson appendant, the Aduowson remaines in coparcenarie, and yet in euerie of their turnes, it is appendant to that part which they haue, and so it is if they make composition to present against common right, yet it remaines appendant. But if vpon such a partition an expresse exception bee made of the Aduowson, then the Aduowson remaines in Coparcenarie and in grosse, and so are the bookes reconciled. 13.E.2 Quar.imp.170. 41.E.3.35. 13.E.3.Quar.imp.58. 17.E.3.38. 9.Eliz.Dier 259. 7.E.3. 20.19 E.3 Quar.imp.59. 35.H.6.33.33. 38.H.6.9. 2.H.7.5. Rr. 8. fo: 79

¶ *Common de pasture.* (c) Communia, it commeth of the English word Common, because it is common to many, and thereupon, and accordingly is here called by Littleton Common of pasture, for that the feeding of beasts in the land wherein the Common is to be had belongs to many. (c) Glanuill lib.13.ca.36. Bract.lib.4.c.19 & 40. Brit.cap.55.56.57. Fleta lib 4.ca.19. Mirror ca.5.sect 3.

(d) There bee foure kinds of Common of pasture, viz. Common appendant which is of common right, (and therefore a man need not prescribe for it) for beasts commonable (that is) that serue for the maintenance of the plough, as horse and oxen to plow the land, and for kine and sheepe to compester the land, and is appendant to arrable land. (d) 20.E.2.Admesurement 8.Temps E.1 Common 24.17.E 2 ibid.23. 4.H.6. 22.H.6.

(e) The second is Common appurtenant, that is for beasts not commonable, as swine, goats, and the like. (f) If a man purchase part of the land wherein Common appendant is to be had the Common shall be apportioned, because it is of common right, but not so of a Common appurtenant, or of any other Common of what nature soeuer. But both Common appendant & appurtenant shall be apportioned by alienation of part of the land to which Common is appendant or appurtenant, and for Common appurtenant one must prescribe. (e) 37.H.6.34. 26.H.8.4. F.N.B. 181. (f) Lib.4.f.37.38.&c. Tirringhams case.

(g) The third is Common per cause de vicinage, which differeth from both the other Commons, for that no man can put his beasts therein, but they must escape thither of themselues by reason of vicinitie, in which case one may inclose against the other, though it hath beene so vsed time out of minde, for that it is but an excuse for trespasse. (g) Lib.8.fo.78.79. W. Wildes case. an y^e cap y^e inclosation of com. cause de

The last is Common in grosse, which is so called for that it appertaineth to no land, and must be by writing or prescription. Of Common appendant, appurtenant, and in grosse, some be certaine, that is, for a certaine number of beasts, some certaine by consequent, viz. for such as be leuant and couchant vpon the land, and some be more incertaine, as common sans number in grosse, and yet the Tenant of the land must common or feed there also.

There be also (h) diuers other Commons as of Estouers, of Turbarie, of Piscarie, of digging for Coles, Minerals and the like. (i) If Common appendant bee claimed to a Mannor, yet in rei veritate it is appendant to the Demesnes and not to the services, and therefore if a Tenancie escheat, the Lord shall not encrease his Common by reason of that. (h) Fleta vbi supra. (i) 13.E.3.fol.43.

(k) If a man claime by Prescription any manner of Common in another mans land, and that the owner of the land shall bee excluded to haue Pasture, Estouers or the like, this is a prescription or custome against the Law, to exclude the owner of the soyle, for it is against the nature of this word Common, and it was implyed in the first grant that the owner of the soyle should take his reasonable profit there, as it hath beene adiudged. (k) 15.E.2.Prescript.51. 12.H.8.fol.2.

(l) But a man may prescribe or alleage a custome to haue and enioy Solam vesturam terræ, from such a day till such a day, and hereby the owner of the soyle shall bee excluded to pasture or feed there, and so he may prescribe to haue Separalem pasturam, and exclude the owner of the soyle from feeding there. Nota diuersitatem. (m) So a man may prescribe to haue Separalem piscariam in such a water, and the owner of the soile shall not fish there, but if he claime to haue Communiam piscariæ, or Liberam piscariam, the owner of the soyle shall fish there, and all this hath * Pasch.26.Eliz.in the Kings Bench, inter White & Shirland in Com. Oxon. Vide sect.1.& 2. (l) Vide 3.E.3.29.30. 4.E.3.7.46.E.3.23. 15.E.2.Prescript.51. (m) 20.H.6.4. 10.H.7.24. Temps E.1. Assise 412.

(*) Inter Chinery & Fishen in le Com. banke in replevin & Mic.29.& 30. Eliz. inter Shirlond & White in Com. Oxon. Et inter Foiston & Crachrode eodem termino in Essex.

bœne resolued. (*) And therefore it is necessarie for euerie man by learned aduice to plead according to the truth of his case, for Parols font plea.

(n) A man seised of land whereunto Common is appendant, and is disseised, the Disseisee cannot vse the Common vntill he entreth into the land whereunto it is appendant. (o) But if a man bee disseised of a Mannor whereunto an Aduowson is appendant, hee may present vnto the Aduowson before he enters into the Mannor, and the reason of this diuersitie is because in the case of the Common it should be a preiudice to the Tenant of the soile. For if the Disseisee might doe it, the Disseisor also might put on his Cattle, which should bee a double charge to the Tenant, but not so of the Aduowson.

(n) 19.H.6.33.
(o) Vide sect.541.

Sect. 185.

Brast.lib.1.cap.6. Britton fol.78. Fleta li.1.c.5.43.E.3.4.b. 19.E.2 tit.vill.34. 18.E.4.29. (p) 19.H.6.32. 26.Ass.62. 37.Ass.17. 11.H.4.16. in Appeale.

THis is intended in some action brought against him that made such confession, (p) or where hee is brought into Court by course of Law, for if he commeth into the Court extraiudicially and not by any due course of Law, such confession is without warrant of Law, and bindeth not the partie, because the Court had no warrant to take it. But if a Præcipe be brought against one, he may confesse himselfe villeine to an estranger, and that he holds the land in villenage of him, and this is good and shall binde him. And if in that case the demandant reply, that he the day of his Writ purchased was a freeman, and thereupon issue is taken, and he is tried to be free, yet he shall remaine villeine to the stranger in respect of his confession.

41.E.3.tit.vill 6.

19.H.6.32.b.

If a Writ of Natiuo habend' be brought against one, and the Plaintiffe as he ought, offereth in his Count to proue the villenage by the Cousins and Kindred of the Defendant, and thereupon produceth the Vncles of the Defendant, who vpon examination confesse themselues to be Villeines to the Demandant, this confession being entred of record, doth so binde, that albeit they were so free before, they and the heires of their bodies are by this confession bond and Villeines for euer, for the Vncles came in by due course of Law in an Action depending in Court.

CItem si home voile en Court de record soy conuster destre villein, que ne fuit villeine deuant, tiel est villeine en grosse.

ALso if a man will acknowledge himselfe in a Court of Record to bee a Villeine, who was not a villeine before, such a one is a Villeine in grosse.

Sect. 186.

F.N.B.161.E. Regist.122. & 277. Britton fol.20. Brast.l.3.tract.2.c.12.13. Fleta lib.1.cap.48. 3.H.5.tit.Villany 8th. sham.

CNiefe. Or Naife is in Latine naturalis, seu natiua, because for the most part Niefes are bond by Nativitie.

C *Feme que est vtlage est dit waiue.*

Waiue, Wauiata and not vtlagata or exlex, for that women are not sworne in Leets, or Tornes, as men which be of the age of 12. yeares or more be, and therefore men may be called vtlagati, id est, extra legem positi, but women are Waiuiatæ, id est, derelictæ, left out or not regarded, because they were not sworne to the Law, wherein it is to be noted that of ancient time a man was not said to be within the Law, that was not sworne to the Law, which is intended of the Oath of Allegeance in the Leet.

Regist.orig.130.

And the Outlawrie of a woman is legally called Waiuiaria mulieris.

CItem home que est villeine est appelle villeine, & feme que est villeine est appelle Niefe: Sicome home que est vtlage est dit vtlage, & feme que est vtlage est dit waiue.

ALso a man which is a villein is called a Villeine, and a woman which is Villein, is called a Niefe. As a man which is outlawed, is called outlawed: and a woman which is outlawed, is called waiued.

Sect.

Sect. 187.

¶ Item ſi vn Villeine pyent franke feme a feme, & ad iſſue enter eux, iſſues ſerront Villeines. Mes ſi niefe pyent franke home a ſa baron, lour iſſues ſerra franke.

* Et ceſt contrarie a le Ley Ciuill, car la eſt dit, Partus ſequitur ventrem. *

ALſo if a Villeine taketh a free woman to wife, and haue iſſue betweene them, the iſſues ſhall be Villeines. But if a Niefe taketh a freeman to her husband, their iſſue ſhall be free.

* This is contrarie to the Ciuill Law, for there it is ſaid, *Partus ſequitur ventrem.* *

¶ Surculus totum alimentum à ſtipite capit, poma tamen edit ſua. The Stocke takes all his nouriſhment from the ſtocke, and yet it produceth his owne fruit. Fortescue cap 42. Glanuill lib. 5. cap 6. Hill 29 E. 1. coram Rege Iborum in Theſaur.

(q) Si quis de ſeruo patre natus ſit & matre libera, pro ſeruo reddatur occiſus in ea parte, quia ſemper à patre, non à matre generationis ordo texitur: ſi pater ſit liber & mater ancilla pro libero reddatur occiſus. (r) Lex Angliæ nunquam matris ſed ſemper patris conditionem imitari partum judicat. (q) Lib. rub. cap. 77. (r) Fortescue vbi ſupra.

(ſ) The husband and wife are all one perſon in Law, and the Niefe marrying a freeman is infranchiſed during the couerture, and therefore by the Common Law of England the iſſue is free. (ſ) Herewith agreeth Britton fol. 78. b.

(t) Si mulier ſerua copulata ſit libero, &c. quod partus habebit hæreditatem, & mater nullam dotem, quia mortuo viro ſuo libero redit in priſtinum ſtatum ſeruitutis niſi hæres ei dotem fecerit de gratia. And when a bondman marrieth a free woman, they are all one perſon in Law, and Duæ animæ in carne vna, and Vxor ſubjecta eſt viro, & ſub poteſtate viri, (t) Bract. lib. 4 fol. 298. b. Idem lib 1. cap. 6 Mirror cap. 2. ſect. 18.

(u) Obſeruatur in Com' Cornubiæ de tali conſuetudine, quæ talis eſt, quod ſi liber homo ducat natiuam aliquam in vxorem ad liberum tenementum & liberum thorum, ſi ex ea duæ procreantur filiæ, vna erit libera & altera villana, quia ibi partiti ſunt pueri inter liberum patrem & Dominum vxoris villanæ. (u) Bract. lib. 4. fol. 271.

(x) Qui vero procreantur ex natiua vnius, & natiuo alterius, proportionabiliter inter Dominos ſunt diuidendi. (x) Glanuill lib. 5. cap. 6.

¶ *Et ceo eſt contrarie al Ley Ciuil.* For true it is that by that Law Partus ſequitur ventrem, aſwell where a free man takes a bond woman to wife, as where a bondman takes a free woman to wife. In the firſt caſe the iſſue is by the Ciuill Law bond, and in the other free, both which caſes are contrarie to the Law of England: but this is no part of Littleton, and therefore we in this manner paſſe it ouer. Fortescue cap. 42.

Sect. 188.

¶ Item nul baſtard poit eſtre villeine, ſi non que il voile ſoy conuſter eſtre villeine en court de record, car il eſt en ley, quaſi nullius filius, pur ceo que il ne poit enheriter a nulluy.

ALſo no baſtard may be a villeine, vnleſſe hee will acknowledge himſelfe to bee a villeine in a Court of Record, for he is in law, *quaſi nullius filius*, becauſe hee cannot be heire to any.

¶ *Nullius (a) filius*, Cui pater eſt populus, pater eſt ſibi nullus, & omnis.

Cui pater eſt populus, non habet ille patrem. (a) Vide ſect. 399. 13 E. 1. tit. villen. 36.

(b) Some hold that the Baſtard of a niefe ſhall bee a villeine. (c) And others hold that if a villeine hath a Baſtard by a woman, and after marrieth ſ woman, that this Baſtard is a villeine, but the Britton vbi ſupra. (b) Bract. lib. 1. fo. 5. a. Fleta lib. 1. cap. 3. Britton fol. 78. (c) 39 E. 3 34. 43 E 3. 4.

Law is contrarie in both caſes, for in both caſes, the iſſue by the Common Law is a Baſtard, and conſequently, quaſi nullius filius, as Littleton here ſaith. (d) Though a Baſtard bee a reputed ſonne, yet is he not ſuch a ſonne in conſideration wherof an Aile can be raiſed for the reaſon that Littleton here yeelds, becauſe in iudgment of Law he is Nullius filius. (e) And for (d) 23. Eliz. Dier 374. (e) 13. Eliz. Dier 296.

14.Eliz.Dier 313. 18.Eliz.Dier 345.

for the same reason where the Statute of 32.H.8. of Wills speaketh of Children, bastard children are not within that Statute, and the bastard of a woman is no childe within that Statute where the mother conueyes lands vnto him.

(f) Trin 18.E.1.Rot.61. Bedf.coram Rege.

(f) It was found by verdict that Henry the sonne of Beatrice which was the wife of Robert Radwell deceased, was borne per vndecim dies post vltimum tempus legitimum mulieribus constitutum. And thereupon it was adiudged, Quod dictus Henricus dici non debet filius prædicti Roberti secundum legem & consuetudinem Angliæ constitut'. Now Legitimum tempus in that case appointed by the Law at the furthest is nine moneths, or fortie weekes, but thee may bee deliuered before that time, which iudgement I thought good to mention. And this agreeth with that in Esdras. Vade & interroga prægnantem, si quando impleuerit nouem menses suos adhuc poterit matrix eius retinere partum in semetipsa? & dixi, non potest Domine.

4. Esdras 4.41. Vide Panciroll, noua reporta, pag.485.&c.

Sect. 189.

¶ *Hescun villeine est able & franke de suer, &c.* (g) In an Action brought by a villeine, Versus non Dominum, non valebit ei exceptio, quia est seruus alienus ex quo nihil ad ipsum vtrum liber sit an seruus. (h) And it is to bee obserued, that hee that hath but a particular estate in a villeine, as tenant for life or for yeares shall disable the villeine if he brings an action against him, but the Lessor shall not (as it is said) disable him, (i) Examinatio villenagii non tenet, nisi ex ore veri Domini fuerit pronunciata.

(g) Bract.lib.4.fol.196. Britton cap.49,fo.125.

(h) 14.E.4.6.b. 15.E.4. 32. 20.E.3.tit.Villein 30. 38.E.3.21.

(i) Fleta lib.2.cap.4.

¶ ITem chescun villein est able & franke de suer touts maners dactions enuers chescun person, forspris enuers son Seignior a que il est villeine. Et vncore en certaine choses il poit auer action enuers son Seignior. Car il poit auer enuers son Seignior vn action dappeale de mort son pere, ou dauters de les auncesters que heire il est.

ALso euerie Villeine is able and free to sue all manner of Actions against euerie person, except against his Lord to whom hee is villeine: and yet in certaine things he may haue against his Lord an Action, for hee may haue against his Lord an action of appeale for the death of his father, or of his other Ancestors whose heire he is.

¶ *Appeale.* Appellum commeth of the French word Appeller, that signifieth to accuse or to appeach. An Appeach. (k) An Appeale is an accusation of one vpon another with a purpose to attaint him of felony by words ordained for it.

(k) Britt.cap.22,fo.38. Bracton lib.2.fo.6.

¶ *De mort* (l) for a Villeine shall not haue an appeale of robberie against his Lord, for that hee may lawfully take the goods of the Villeine as his owne. (m) And if in an Appeale of death it bee found for the Plaintife, hee is infranchised for euer. Hinc enim est quod eo ipso sunt huiusmodi Domini seruos suos amissuri cum de injuriis fuerint conuicti. And there is no diuersitie herein whether he be a Villein regardant, or in grosse, although some haue said the contrarie.

(l) 18.E.3.32.11.H.4.93. 1.H.4.5. 29.H.6.tit. Corone 17.

(m) Fleta li.1.c.5. 1.H.4.6.

Sect. 190.

¶ *Rape.* (n) Raptus is when a man hath carnal knowledge of a woman by force and against her will.

(n) Mirror ca.1.sect.12. Cap.3.de Rape,& cap.41 de homicide.

¶ *Appeale de rape.* (*) By the generall purview of the Statutes, (*) that giue the Appeale of Rape, the Niese shall haue an Appeale of Rape against the Lord. (o) And it seemeth by the ancient Authors of the Law, that this so heinous an offence was seuerely punished by losse of eyes, and other members, but of old time it was felony, which you may read at large in the second part of the Institutes, W.1.ca.13.

(*) W.1.c.13. W.2.c.35. 6.R.2.ca.6. 11.H.4.cap. 13. 1.R.4.cap.1.

(o) 19.H.6.tit.Coron.17. Bract.lib.3.fol.147.

¶ ANy vn Niese que est rauie per sa Seignior, poit auer vn appeale de rape enuers luy.

ALso a Niese that is rauished by her Lord, may haue an Appeale of Rape against him.

(p) And

(p) And this word Rape which our Author here vseth is here appropriated by Law to this case, as without this word (Rapuit) it cannot be expressed by any Periphrasis or circumlocution, for Carnaliter cognouit eam, or the like, will not serue.

(p) 9.E.4.26. Mirror ca.1.sect.19.

Rape is also part of a county signifying as much as Rumland V. Cow: Interpr. verbo: Rape.

Sect. 191.

CAury si vn villeine soit fait executif a vn aut, & le Sñr del villeine fuit en dette a le testator en vn certeine summe dargent que nest my paie, en ceo case le villeine come executor de le testator auera action de det en uers son Seignior, pur ceo que il ne recouera le det a son vse demesne, mes al vse le testator.

ALso if a villeine bee made executor to another, and the Lord of the villeine was indebted to the testator in a certaine sum of mony which is not paid, in this case the villeine as executor of the testator shall haue an action of debt against his Lord, because he shall not recouer the debt to his owne vse, but to the vse of the testator.

COf this matter sufficient hath beene spoken in this Chapter before. The Villeine shall haue an action as Executor against his Lord, and it is no plea for the Lord, to say that the Plaintife is his Villeine, for hee shall not be enfranchised by the vser of this action, because he hath it by a gift in Law to the vse of the Testator, and not to his owne vse.

21.E.4.30.2.

Sect. 192.

ITem le Sñr ne poit prender hors del possession de tiel villein q̃ est Executor les biens le mort, & sil face, le villeine cõe Executor auera action de trespasse de mesmes les bñs ilsint prises enuers son Sñr, & recouera damages al vse le testator. Mes en touts tiels cases, il couient que la Sñr que est defendant en tiels actions face protestation, q̃ le plaintife est son villeine, ou autrement le villeine serra enfranchise, co-

ALso the Lord may not take out of the possession of such Villeine who is Executor, the goods of the deceased, and if hee doth, the villeine as Executor shall haue an action for the same goods so taken against his Lord, and shall recouer damages to the vse of the testator. But in all such cases it behoueth that the Lord which is defendant in such Actions, maketh protestation that the plaintife is his villeine, or otherwise the villeine shall bee infran-

CLE Seignior ne poet prender hors del possession, &c. Of this also sufficient hath beene said before.

CEt recouera damages al vse del Testator.

(q) Note damages recouered by the Executor in an action of trespasse shall be assets, and yet they were neuer in the Testator. And so it is in other like cases, as by our bookes it appeareth.

(q) 21.E.4.4.b. 11.H.6.35.b. 3.H.6.2. 2.H.4.21. 1.H.4.6.

(r) If an Executor hath a villeine for yeares, and the villein purchases lands in fee the Executor entreth, he shall haue the whole fee simple, but because hee had the villeine in auter droit, viz. as Executor to the vse of the dead, it shall be assets in his hands. Note a diuersitie betweene the quantitie of the estate, and the qualitie of it, for the Law respecteth not the quantitie of the estate, for not vnely

(r) Doct. & Stud. Brooke tit. Villenage 70. Vide ante 117.a.

(r) Tenant

(s) L. 5. E. 4. 61.

(s) Tenant in taile, and Tenant for life of a villeine shall haue the perquisite of the villeine in fee, but (t) Tenant for yeares, and Tenant at will shall also haue it in fee.

ment que le matter ſoit troue p̄ le Sñr, & encounter le villein, come eſt dit.

chiſed although the matter bee found for the Lord, and against the villein, as it is ſaid.

(t) 21 H. 3. 6. 37.

But the Law reſpecteth the qualitie, for in what right he hath the Villeine, in the ſame right ſhall he haue the perquiſite, as in the caſe of the Executor aboueſaid, and in the caſe of the Biſhop (u) that hath the Villeine in right of his Church, hee ſhall haue the perquiſite in the ſame right.

(u) 41. E. 3. 21.

(x) So if a man hath a Villeine in the right of his wife, he ſhall haue the perquiſite alſo in her right. But if the purchaſe be after iſſue had, then the Baron ſhall haue the perquiſite to him and his heires, becauſe by the iſſue he is intituled to be Tenant by the Curteſie in his owne right.

(x) 18. E. 3. 29.

Vide ſect. 193.

¶ *Proteſtation.* (y) Proteſtatio is an excluſion of a concluſion that a partie to an action may by pleading incurre, or it is a ſafegard to the partie which keepeth him from being concluded by the plea he is to make, if the iſſue be found for him: but in this caſe without a proteſtation, albeit the iſſue be found for the Lord, the Villeine ſhall be enfranchiſed, as it appeareth hereafter in this Section.

(y) Pl. Com. 276. b. In Greisbrooks caſe.

Sect. 193.

Brit. fol. 79. 123. b. 126. a.

¶ *Eo ſerra trie en le Countie, &c.* We tried, that is, as it is intended by the verdict of xij. men, that is called in Law a triall, triatio.

(a) In this caſe the Law doth fauour the villein in the iſſue, for otherwiſe by the rule of Law in like caſes hee ought to anſwer to the ſpeciall matter, viz. to the regardancie, but in fauour of libertie hee may reply that hee is free and of free eſtate, and conſequently this iſſue concerning the perſon ſhall bee tried where the Writ is brought. (b) The like Law it is, if iſſue be ioyned vpon the Idiocie of the Plaintife or Defendant, it ſhall be tried where the Writ is brought, becauſe it concerneth the perſon.

(a) 7. E. 3. 58. 26. E. 3. 73. 38. E. 3. 34. 40. E. 3. 36. 43. E. 3. 32. 44. E. 3. 36. 47. E. 3. 26. 22. H. 6. 52. 35. H. 6. 12. 37. H. 6. 24. Vide ſect. 534.

(b) 2. Mar. Dier 112.

¶ *In fauorem libertatis.* It is commonly ſaid that three things be fauoured in Law, Life, Libertie, Dower,

(c) Impius & crudelis iudicandus eſt qui libertati non fauet: Angliæ iura in omni caſu libertati dant fauorem.

(c) Fortescue, cap. 42.

Triall is to finde out by due examination the truth of the point in iſſue or queſtion betweene the parties, whereon

¶ Item ſi villeine ſuiſt vn action de treſpaſſe, ou vn auter action enuers ſon Sñr en vn Countie, & le Sñr dit q̄ il ne ſerra reſpondus, pur ceo q̄ il eſt ſon villeine regardant a ſon manor en auter Countie, & le Plaintife dit que il eſt franke & de franke eſtate, & nemy villeine, ceo ſerra trie en le Countie lou le Plaintife auoit conceiue ſon action, & nemy en le county lou le manor eſt, & ceo eſt in fauorem libertatis, & pur cel cauſe vn eſtatute fuit fait an. 9. R. 2. cap. 2. le tenor de quel enſuiſt en tiel forme. Item pur la ou pluſors villeins, & Nieſes, ſibien des graundes Seigni-

Alſo if a Villeine ſue than action of treſpaſſe or any other action againſt his Lord in one Countie, and the Lord ſaith that hee ſhall not be anſwered becauſe hee is his villeine regardant to his Mannour in another Countie, & the plaintife ſaith that hee is free, and of a free eſtate, and not a villein, this ſhall bee tried in the Countie where the Plaintife hath conceiued his action, & not in the Countie where the Mannor is, and this is in fauour of libertie. And for this cauſe a Statute was made *anno* 9. R. 2. *ca.* 2. the tenor whereof followeth in this forme. Alſo for that where many villeins & neifs,

ors

ors, come des auters gentes, sibñ espirituals come temporals senfuent, deins cities, villes, & lieux enfranchise, come en la citie de Londres, & auters semblables, & feignont diuers suits enuers lour Sñrs, a cause de eux fait frankes per le respons de lour Sñrs: Accorde est & assentus, q̃ les Seigniors, ne auters, ne soyent iny forbarres de lour Villeines per cause de lour respons en ley. Perforce de quel estatute, si alcun villeine voylloit suer alcun maner de action a son vse demesne en alcun Countie, ou il est fort a trier enuers son Seignior, le Sñr poyt essyer de pleader que le plaintife est son villeine, ou de faire protestation que il est son villeine, & de pleder son auter matter en barre. Et si ils sont a issue, & issue soit troue pur le Sñr, donqs le villein est villeine come il fuit deuant per force de mesme lestatute. Mes si le issue soit troue pur le villeine, donque le villeine est franke, pur ceo que le

aſwell of great Lords as of other men, aſwell of ſpirituall and temporall flye and goe into Cities, townes and places franchiſed as into the Citie of London and other like places, and feine diuers ſuits againſt their Lords becauſe they would make themſelues free by the anſwer of their Lords. It is accorded and aſſented, that Lords nor others ſhall not be forebarred of their villeins by reaſon of their anſwer in Law. By force of which ſtatute if any villeine will ſue any manner of action to his owne vſe in any Countie where it is hard to trie againſt his Lord, the Lord may chuſe whether he will plead that the plaintife is his villeine, or make proteſtation that hee is his villeine, and plead his other matter in bar. And if they be at iſſue, and the iſſue be found for the Lord, then the villeine is a villeine as hee was before by force of the ſame ſtatute. But if the iſſue bee found for the villeine, then the villeine is free, becauſe that the Lord tooke

vpon iudgement may bee giuen. And as the queſtion betweene the parties is twofold, ſo is the triall thereof: for either it is quæſtio juris, (and that ſhall be tried by the Judges either vpon a Demurrer, ſpeciall verdict or exception, for Cuilibet in ſua arte perito eſt credendum: & quod quiſque norit in hoc ſe exerceat, and it is commonly and truly ſaid, Ad quæſtionem juris non reſpondent juratores) or it is quæſtio facti. And the triall of the fact is in diuers ſorts, whereof a light touch is giuen before, Sect. 102. of theſe a triall by xii. men (here intended by Littleton) is the moſt frequent and common: And ſome few rules of Law are neceſſarie here to bee remembred (for the better vnderſtanding of the bookes of Law hereafter) where and from what place, viz. De quo vicineto, out of what neighborhood the Jurie ſhall come, a neceſſarie point to bee knowne, for if there be a miſtriall, (that is) if the Jurie commeth out of a wrong place, or returned by a wrong Officer and giue a verdict, iudgement ought not to bee giuen vpon ſuch a verdict. (d) Wherein the moſt general rule is, that euerie triall ſhall be out of that Towne, Pariſh, or Hamlet, or place knowne out of the towne &c. within the Record, within which the matter of fact iſſuable is alleaged, which is moſt certaine & neereſt thereunto, the Inhabitants whereof may haue the better & more certaine knowledge of the fact: as if the fact be alleaged in quadam platea vocat' Kingſtreet in Ciuitate Weſtm. in com' Midd. in this caſe the Iſſue cannot come out of Platea, becauſe it is neither Towne, Pariſh, Hamlet, nor place out of the neighbourhood whereof a Jurie may come by Law, but in this caſe it ſhall not come out of Weſtminſter, but out of the Pariſh of St. Margaret, becauſe that is the moſt certaine. But

Vide ſect. 234.

Vide ſect. 102.

Vide ſect. 234. more of this matter.

(d) 3. E. 3. 73. 20. H. 6. 30. 7. H. 4. 27 9 H 5. 8. 8. H. 6. 34 7. H. 6. 7. 17. E. 3. 56. 43. E 3. 5. 47. E. 3. 6. 34. H. 6. 1.

therein

Seignior ne pleist al commencement pur son plee q̄ le villeine fuit son villeine, mes ceo pleist per protestation, &c.

nor at the beginning for his Plee that the Villeine was his Villeine, but tooke this by protestation, &c.

*therein also it is to bee noted, that if it had beene alleaged in Kingstreet in the Parish of St. Margaret in the Countie of Middlesex, then should it haue come out of Kingstreet, for then should Kingstreet haue beene esteemed in Law a towne: (e) for whensoeuer a place is alleaged generally in pleading (without some addition to declare the contrarie, as in this case it is) it shall be taken for a towne. (f) And albeit Parochia generally alleaged is a place incertaine, and may (as we see by experience) include diuers townes, yet if a matter be alleaged in Parochia, it shall be intended in Law that it containeth no more townes than one, vnlesse the partie doth shew the contrarie. (g) But when a parish is alleaged within a Citie, there without question the Visne shall come out of the parish, for that is more certaine than the Citie.

(h) If a trespasse be alleaged in D. and nul tiel ville is pleaded, the Iurie shall come out de corpore comitatus, but if it be alleaged in S. and D. and nul tiel ville de D. is pleaded, the Iurie shall come out de Vicineto de S. for that is the more certaine. So if a matter be alleaged within a Mannor, the Iurie shall come de Vicineto manerii, but if the Mannor be alleaged within a towne, it shall come out of the towne, because that is most certaine, for the Mannor may extend into diuers townes. And all these points were resolued by all the Iudges of England vpon conference betweene them in the case of Iohn Arundel Esquire indited for the death of William Parker.*

(i) In a reall action where the Demandant demands land in one Countie, as heire to his father, & alleages his birth in another Countie, if it be denied that he is heire, it shall not be tried where the birth was alleaged, but where the land lieth, for there the Law presumes it shall be best knowne who is heire. But if the Defendant make himselfe heire to a woman, for that is the surer & more certaine side, and the mother is certaine, when perhaps the father is incertaine, and therefore there it shall be tried, where the birth is alleaged, because they haue more certaine conusance then where the land lieth. And so it is where generally bastardy is alleaged, the triall shall be in like case Mutatis mutandis. (k) If a man plead the Kings Letters Patents, and the other partie plead Non concessit, it shall not be tried, where the letters patents beare Date, for they cannot be denied, but where the land lieth.

Euerie triall must come out of the neighborhood of a Castle, Mannor, Towne or Hamlet, or place knowne out of a Castle, Mannor, Towne or Hamlet, as some Forrests and the like, as before and by the Authorities thereupon quoted appeareth.

Euerie plea concerning the person of the Plaintife, &c. shall be tried where the Writ is brought, as it appeareth before.

When the matter alleaged extendeth into a place at the Common Law, and a place within a Franchise, it shall be tried at the Common Law.

(l) In an action against two, the one pleads to the Writ, the other to the Action, the plea to the Writ shall be first tried, for if that be found, all the whole Writ shall abate, and make an end of the businesse.

(m) In a plea personall against diuers Defendants, the one Defendant pleads in barre to parcell, or which extendeth only to him that pleadeth it, & the other pleads a plea which goeth to the whole, the plea that goeth to the whole, (that is) to both defendants, shall be first tried, and of this opinion was Littleton in our bookes, for the triall of that goeth to the whole, and the other Defendant shall haue aduantage thereof, for in a personall action the discharge of one is the discharge of both. As for example, if one of the Defendants in trespasse pleads release to himselfe, (which in Law extends to both) and the other pleads not guiltie (which extends but to himselfe) or if one plead a plea which excuses himselfe only, and the other plead another plea, which goeth to the whole, the plea which goeth to the whole shall be first tried, for if that be found it maketh an end of all, and the other defendant shall take aduantage hereof, because the discharge of one is the discharge of both: but in a plea reall it is otherwise, for euerie Tenant may lose his part of the land: (n) as if a Præcipe be brought as heire to his father against two, and one plead a plea which extendeth but to himselfe, and the other pleads a plea which extends to both as bastardy in the Demandant, and it is found for him, yet the other issue shall be tried, for he shall not take aduantage of the plea of the other, because one ioyntenant may lose his part by his nulplea. (o) But where an issue is ioyned for part, and a Demurrer for the residue, the Court may direct the triall of the issue, or iudge the Demurrer first at their pleasure.

(p) If a Venire fac. be awarded to the Coroners where it ought to be to the Sheriffe, or the Visne commeth out of a wrong place, yet if it be Per assensum partium, and so entred of record it

(e) 4.E.3.30. 8.E.3.68. 32.H.6.13. Brooke pleading 61.
(f) 4.E.4.41. 5.E.4.20. 22 E.4.2. 35.H.6.30. 22 H.6.47. lib.1.162. Digges case lib.11.fol.25. lib.6.fo.14.
(g) 1.E.3.8.7.H.6.38.
(h) 22.E.3.tit.visne F. 27.6.H.7.2.b. 21.H.7.22.b. 9.E.4.3.a 3 E.4 26. 39.H 6.treip.93. 4 E.3 30.
(*) Lib.6.fo.14. Arundels case.
(i) 45.E.2.5.a. 46 E 3.6.& 7. Gernons case. 18.E.3.58. 11.H.4.36.b. 57. 17.E.3 35.b. 39.Ass.10. 38.Ass.30. 35.Ass.7.
(k) Mich.31.& 32.Eliz. Rot.365 in the Kings Benchinter Edan & Frankline adiudge 3.Mar. Dier 129.18.Eliz.Dier 353.17.Eliz.Dier 342.
(l) 8.E.4.24. 9.H.6.46.47. 21.H.6.4. 18.Ass.7. 50.E.3 16.17.7 E.4.31. 27.H.8.30. 11.H 4.68.
(m) 15.E.4.25.b. 9.H.6.46. 26.E.3. 7.E.4.31. 39.E.3.16.17.
(n) 9.H.6.46. 39.E.3.16.17.
(o) Lib.10.fo.54. and the bookes there cited.
(p) Mich.21.& 22.Eliz. Dier 367. Lib.5.fol.36.b. Bainhams case. 39 E.3.2.b. 44.E 3.6. 11.H.6.13.li.5. fol.40. Dormers case.

it shall stand, for Omnis consensus tollit errorem. And thus much of these excellent points of learning: and if you desire to know the institution and right vse of this triall by 12. men, & of the antiquitie thereof, and more of this matter, read the 234. Section hereafter, which is worthy of your obseruation. Vid. sect. 234.

¶ *Estatute.* Or statute. This commeth of the Latine word Statutum, which is taken for an Act of Parliament made by the King, the Lords and Commons, and is diuided into two branches generall and speciall. This Statute here mentioned is a generall Statute, and is darkely and obscurely penned. Vid. 25 E.3 ca 13. F.N.B 77.c. 26.E.3.73.

¶ *Et sils sont a issue.* (q) Issue, exitus, a single, certaine, and materiall point issuing out of the allegations and pleas of the Plaintife and Defendant, consisting regularly vpon an affirmative and negatiue to bee tried by twelue men, and it is two-fold, a speciall issue, as here in the case of Littleton, or generall, as in trespasse, not guilty: in assise, nul tort, nul disseisin, &c. And as an issue naturall commeth of two seuerall persons, so an issue legall issueth out of two seuerall allegations of aduers parties. (q) Vid. sect. 414. 7.H.6. 43 9 E.4.36. 35.H 6.15. 5.E.4.26. 11.H.479.

And to make our bookes more easie to be vnderstood concerning this point, it is good to set downe some necessarie rules (among many other) concerning toyning of issues. An issue being taken generally referreth to the Count, and not to the Writ: As in an Account the Writ chargeth him generally to be his receiuer, the Court chargeth him specially to bee his receiuer by the hands of T. the Defendant pleadeth that hee was neuer his receiuer in manner and forme, &c. this shall referre to the Count, so as he cannot be charged but by the receipt by the hands of T. 7 E.3 34.

(r) A speciall issue must be taken in one certaine materiall point which may be best vnderstood, and best tryed. (r) 20 E.3. issue 31. 22 E. 4.28. 8.E.3.8. 9 H.6.18. 38.E.3.33.

(s) An issue shall not be taken vpon a negatiue pregnant, which implyeth another sufficient matter, but vpon that which is single and simple, as Ne dona pas per le fait, imply a gift by parol, therefore the issue must be Ne dona pas modo & forma. (s) 21 H.6 9.b 16 E.4.5. 24 E 3.32 33.-75.31.E 3. Issue 171. E 3.10.27. 21.E 3 49.30. 3.8.

(t) An issue toyned vpon an Absque hoc, &c. ought to haue an affirmative after it: two affirmatiues shall not make an issue vnlesse it be lest the issue should not be tried. 10.E.3.32. 22.E 3.1. 10 E 3. issue 35. 5.H 7.8.

(u) Some issues be good vpon matter affirmatiue and negatiue, albeit the affirmatiue and negatiue be not in precise words, as in debt for rent vpon a lease for yeares, the Defendant pleads that the Plaintife had nothing at the time of the Lease made, the Plaintife replyeth that he was seised in fee, &c. this is a good issue. 31 Ass.25. 12 E 4.4 8. 2.H.4.23. 38 H.6.22. 40.E 3.5. 5.E.3.24.

(w) Where the issue is toyned of the part of the Defendant, the entrie is Et de hoc ponit se super patriam, but if it be of the part of the Plaintife, the entrie is Et hoc petit quod inquiratur per patriam. (t) 18.El Dier 353. 22.H.6.19 32.H.6.23. 2.R 3.6.H.7.5.11.H.4.79. (u) 2.H.7.4. 5.H.7.12. 26.11.H.4.83. 6.E 4.6.b. 26.H.8. Dier 6. in Formedon.

(x) There be some negatiue pleas, that be issues of themselues, whereunto the Demandant, or Plaintife cannot reply, no more than to a generall issue which is, Et prædictus A. similiter. As if the Tenant doe vouch, and the Demandant counterplead that the Vouchee or any of his Auncestors had any thing, &c. whereof he might make a Feoffment, hee shall conclude, Et hoc petit quod inquiratur per patriam, & prædictus tenens similiter. So in a fine pleaded by the Tenant, &c. the Demandant may say, Quod partes finis nihil habuerunt, & hoc petit quod inquiratur per patriam & præd' tenens similiter. And so in a Writ of Dower, the Tenant plead Vnques seisie que Dower, he shall conclude, Et de hoc ponit se super patriam, & pred', petens similiter, and so in many other cases, and of this opinion was Littleton in our bookes. 18.El.Dier 353. (x) 22.H.6.57.59. 33.H.6.21. 3.H.7.9. 12 E.4.13. 17.E.3.53. 77.78. 22.E.3 16.17. 24.E 3.50. 40.E.3.19.

(y) A man leaueth his wife enseint with a childe, issue shall not be taken that she was not enseint by her husband on the day of his death, for Filiatio non potest probari, but the issue must be whether she was enseint the day of his death. (y) 41.E.3.11.b

(z) A protestation auaileth not the partie that taketh it, if the issue bee found against him, and therefore if the issue be found for the Villeine, he is infranchised for euer. And yet in some speciall case albeit the issue be found against him that maketh the protestation, yet he shall take benefit of his protestation, (*) as if a man entreth into Warrantie, and taketh by protestation the value of the land, albeit the plea be found against him, yet the protestation shall serue him for the value. (z) 10 E.4.Protest 5. 10.E.4.12. 32.Ass.9. 30.E 3.14 9.H 6.59. Vid. sect. 192. *30.E 3.14.

Sect. 194.

¶ Item le Sñr ne poet mayhemer son villeine, Car il mayhema son villeine,

ALso the Lord may not maime his Villeine. For if he maime his Villeine,

¶ M*Ayhemer*, (a) or Mehaigner, A French word of which commeth Mayhim, mahemium (id est) membri mutilatio, and (a) Stamf.li.1.ca.41. Glanuill lib.14.c.2.5. Bract.lib.3. fol.144.145. Brit.cap.25.fol.48.49. Fleta,li.1.ca.38.

Mirror, cap. 1. sect. 3.

and membrum est pars corporis habens destinatam operationem in corpore. Mayhemium vero dici poterit vbi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum. And the Law hath so appropriated this word Mayhem, which our Author here vseth, to this offence, as mayhemault cannot bee expressed by any other word, as, mutilauit, truncauit, or detruncauit, or the like.

Vide sect. 2.

¶ *Il serra indite*, or rather endite, and so is the originall, for it commeth of the French word enditer, and signifieth in Law an accusation found by an Enquest of 12. or more vpon their Oath, and the accusation is called Indictamentum. And as the Appeale is euer the suit of the partie, so the Inditement is alwayes the suit of the King, and as it were his declaration. (b) Some deriue it from the Greeke word ἐνδείκνυμι, to accuse.

(b) Lamb. Iust. of Peace.

(c) Vide 2. H. 4. 6. b.

¶ (c) *Nauera, &c. Appeale de mayhem.* Because in that Appeale hee shall recouer but dammages, which the Lord after execution might take againe, and so the iudgement inutile and illusorie, and Sapiens ineipit à fine. And the Law neuer giueth an action where the end of it can bring no profit or benefit to the Plaintife. But here it is to bee obserued that albeit the partie grieued can haue no action for the Mayhem, yet at the Kings suit he shall be punished therefore, for the reason hereafter expressed in this Section. (d) And in ancient time there were Appeales de plagis & de imprisonamento, but they are out of vse and turned to actions of trespasse.

(d) Fleta lib. 1. cap. 40. Britt. cap. 25. Bract. 145. Mirror, cap. 3.

il serra de ceo endite a le suit le Roy, & sil soit de ceo attaint, il serra pur ceo vn grieuous fine & ransome al Roy. Mes il semble que villeine nauera pas per le ley vn appeale de Mayhem enus son Sñr, Car en appeale de Mayheme home recouera forsqz dams, & si le villeine en ceo cas recoña dams enuers son Seignior, & ent auoit execution, le Sñr poit prender ceo que le villeine auoit en execution de le villeine, & issint le recouerie voide, &c.

hee shall of that be indicted at the Kings suit. And if hee bee of that attainted, he shall for that make grieuous Fine and Ransome to the King. But it seemeth that the villeine shall not haue by the Law any Appeale of Mayhem against his Lord, for in Appeale of Mayhem a man shal recouer but his dammages. And if the villeine in that case recouer dammages against his Lord, and hath thereof execution, the Lord may take that the Villeine hath in execution from the villeine, and so the recouerie is void, &c.

¶ *Fine*, Finis. Here fine signifieth a pecuniarie punishment for an offence, or a contempt committed against the King, and regularly to it imprisonment appertaineth. And it is called finis because it is an end for that offence. (e) And in this case a man is said, Facere finem de transgressione, &c. cum Rege, to make an end, or fine with the King for such a transgression. It is also taken for a summe giuen by the Tenant to the Lord for concord, and an end to bee made. (f) It is also taken for the highest and best assurance of Lands, &c.

(e) Regist. Iudic. 25. Lib. 8. fol. 39 Beechers case.

(f) Vide sect. 74. 174. 441.

Here it is good to see what a fine differeth from an amerciament. (g) Amerciament in Latine is called Misericordia, for that it ought to bee assessed mercifully, and this ought to be moderated by affeerement of his equals, or else a Writ De moderata misericordia, doth lye: and thereof Glanuill saith thus. (h) Est autem misericordia Domini Regis qua quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenemento amittat.

(g) Lib. 8. fol 59 Beechers case. F. N. B. 76.
(h) Glanuil lib. 9 cap. 11. Magna Charta cap. 14. Fleta lib. 2. cap. 43. & 60. & lib. 1. cap. 43. Bract lib. 3. fol. 116.

(i) The cause of an amerciament in plea reall, personall or mixt (where the King is to haue no fine) is for that the Tenant or Defendant ought to render the demand (as he is commanded by the Kings Writ) the first day: which if he doe, he shall not be amerced, so as for the delay that the tenant or defendant doth vse he shall be amerced. (k) And albeit the amerciament cannot be imposed, nor the King fully intitled thereunto vntill iudgement be giuen, because by the iudgement the wrong is discerned, yet a pardon before iudgement, after iudgement giuen, shall discharge the partie, because the originall cause, viz. the delay, &c. is pardoned. (l) what then if a Præcipe be brought against an Infant, and hanging the plea, he commeth of full age?

(i) 22. E. 3. 1. & 2. 14. E. 3. amerciam. 16. 2 R. 2. ibid. 26. &c.
(k) Pl. Com. 401. Coles case. 87. H. 6. 21. Lib. 5. fol. 49. Vaughans case.
(l) Vaughans case vbi supra. Beechers case vbi supra.

Is

be ſhall be amerced for the delay after his full age. So likewiſe if the Demandant or Plaintife be Nonſuit or Judgement giuen againſt him, hee ſhall bee likewiſe amerced pro falſo clamore.

(m) And for the payment of this amerciament the Demandant or Plaintife, &c. ſhall finde pledges, and thoſe Demandants or Plaintifes, that ſhall finde no pledges, (as the King, the Queene, an Infant, &c.) ſhall not be amerced. And therefore when ſuch are Demandants or Plaintife, the Writ ſhall not ſay, Si Rex, &c. fecerit te ſecurum de clamore ſuo proſequendo.

(m) F.N.B. 31.f.47.c. & 101.a. Bract. lib.4.fol.254. 17.E.3.75. 18.E.3 2. Britt.amerciam.53. 43.Aſſ.45.&c.

(n) If a Writ doe abate by the act of the Demandant or Plaintife, or for matter of forme, the Demandant or Plaintife ſhall be amerced, but if it abate by the act of God, as by the death of one, where there is two or the like, there ſhall be no amerciament. And to an amerciament, impriſonment belongeth not, as it doth to a fine or ranſome. If you deſire to read more of fines and amerciaments, Vide lib.8.fol 38.39.&c. Greſlyes caſe, & lib.11.fol.43 44 Godtreyes caſe.

(n) Beechers caſe, lib 8. fol.60.b.

(o) It is to be knowne that Wit, Wita, is an old Saxon word, and ſignifieth an amerciament, as Fledwite an amerciament for fleeing or being a fugitiue, and ſo is Fleimeſwite, Blodwite an amerciament for drawing of bloud, Ferdwite concerning warfare, and ſo Letherwite, Childwite, Waidwite, and the like. Sometime it ſignifieth forfeiture, ſometime freedome, or acquitall.

(o) Fleta lib.1,cap.43. Stat.de expoſit. verborũ.

(p) And Bote is alſo an ancient Saxon word, and ſometime ſignifieth amerciament, or compenſation, as Theftbote, Manbote, or freedome from the ſame, as Brigbote, Caſtlebote, Burghbote.

(p) Lam explication of Saxon words. Leges Inæ, cap 19.

Wera or Were (q) ſometime ſignifieth amerciament or compenſation, but properly Wera Anglice idem eſt in Saxonis lingua vel pretium vitæ hominis appretiatum. Which and the like words you ſhall often read in ancient Charters.

(q) Lamb. vbi ſupra, & Fleta lib.1.cap.43.

¶ *Ranſome.* (r) Redemptio is here taken for a grand ſumme of money for redeeming of a great Delinquent from ſome heinous crime, who is to be captiuate in priſon vntill hee payeth it, ſome hold it to amount to his whole eſtate, and others hold that ranſome is a treble fine. (ſ) But in legall vnderſtanding a fine & ranſome are all one, for vpon the Statute of Merlebridge cap.3 vpon theſe words Non ideo puniatur Dominus per Redemptionem. (t) The Tenant ſhall not haue (where the Lord diſtraineth within his fee where nothing is behinde) an Action of Treſpaſſe Quare vi & armis againſt his Lord, for therein the Lord ſhould be puniſhed by redemption, that is, by fine, and in that action the fine is verie ſmall. And this is manifeſt by many Authorities in all ſucceſſion of ages: and this appeareth by our Author in this place, for he ſaith, Il ferra pur ceo vn greiuous fine & ranſome. Where fine and ranſome muſt of neceſſitie in his opinion be taken for all one: for if the fine and ranſome were diuers, then ſhould the partie, that mayhemed the Villeine pay two ſummes, one for a fine, and another for a ranſome, which neuer was done. And aptly a redemption and a fine is taken to be all one, for by the payment of the fine he redeemeth himſelfe from impriſonment, that attendeth the fine, and then there is an end of the buſineſſe.

(r) Dier 6 Eliz.232.

(ſ) See the ſecond part of the Inſtitutes Merlebr. cap.8.

(t) 5.H.7.10. 48.E.3.5.6. 41.E.3.26. 44.E.3.13. 2.H 4.4. 11.H.4.78. 1.H.6.6. 9.H.7.14. 8.E.4.15. 10.E.4.7. 20.E.4 3. 21.E 4.3. Mich.17. & 18. Eliz. Beuels caſe, lib.4. fol.11.& lib.9 fol.76. Combs caſe.

It ſignifieth properly a ſumme of money paid for the redemption of a captiue, and is compounded of re and emo, that is to redeeme or buy againe. And it is to bee knowne, that (u) by the ancient Law of England, if the Defendant in an Appeale of Mayhem had beene found guiltie, the iudgement againſt the Defendant had beene, that he ſhould loſe the like member, that the Plaintife loſt by his meanes, as if the Plaintife had loſt an hand, the Defendant alſo ſhould loſe one, & ſic de cæteris, In reſpect whereof the Writ ſaid, (w) Felonice mayhemauit, for that the Defendant ſhould loſe a member.

(u) 40.Aſſ.9. Mirror ca.4. & ca.5. ſect.18. Britton, cap.25.fol.48. Bract. lib.3.fol.144,145. Fleta, lib 1.cap.38.

(w) Bract. vbi ſupra, Britt.cap.3 fol 77.b.

Alwayes at the Common Law, when the Defendant ſhould loſe life or member, the Writ ſaid Feloniee, &c. And now albeit the Law be changed (for at this day the Plaintife ſhall, as our Author ſaith, recouer but dammages) yet the Writ of Appeale ſaith ſtill Felonice.

Note the life & members of euerie ſubiect are vnder the ſafegard & protection of the King, for as Bracton (x) ſaith, Vita & membra ſunt in poteſtate Regis. And therewith agreeth a notable Record, Paſch.19 E.1. coram Rege Rot.36. Northt. vita & membra ſunt in manu Regis, to the end that they may ſerue the King and their Countrey when occaſion ſhall be offered. May, the Lord of the Villeine for the cauſe aforeſaid cannot mayheme the Villeine, but the King ſhall puniſh him for mayheming of his ſubiect (for that hereby he hath diſabled him to doe the King ſeruice) by fine, ranſome, & impriſonment, vntill the fine and ranſome be paid. So as there is a manifeſt diuerſitie betweene a ranſome and an amerciament, For ranſome is euer when the Law inflicteth a corporall puniſhment by impriſonment, (and ſo is alſo a fine) but otherwiſe it is of an amerciament as hath beene ſaid. And (y) Ancients haue ſaid that Ranſome neſt fors que redemption de paine corporel per fine des deniers. This offence of mayhem is vnder all felonies deſeruing death, and aboue all other inferiour offences, ſo as it may be truly ſaid of it, that it is, Inter crimina maiora minimum, & inter minora maximum. And in my Circuit in Anno 11. Iacobi Regis in the Counti of Leiceſter, one Wright a young ſtrong and luſtie

(x) Brac. lib.1.fol.5. Paſch.19.E.1. coram Rege, Rot 36.Northt.

(y) Mirror,cap.5.ſect.2. & 3.

Rogue to make himselfe impotent, thereby to haue the more colour to beg or to bee relæued, without putting himselfe to any labour, caused his companion to strike off his left hand, and both of them were indited, fined, and ransomed therefore, and that by the opinion of the rest of the Justices for the cause aforesaid.

¶ *Voyde, &c.* Here by (&c.) is implyed a maxime in Law, Quod inutilis labor & sine fructu non est effectus Legis. And againe, Non licet, quod dispendio licet. And, Sapiens incipit à fine, and Lex non præcipit inutilia. (z) Therefore the Law forbiddeth such recoueries whose ends are vaine, chargeable and vnprofitable.

(z) Vide sect. 273. & 578.

Sect. 195.

¶ *Demandant*, petens, Is hee which is Actor in a reall Action, because hee demandeth Lands, &c. And Plaintife, querens in actions personals and mixt, quia queritur de iniuria, &c. Tenant, tenens in reall actions, and defendant, defendens in actions personal and mixt.

¶ *Defence.* Commeth of the word defendo, so called of the manner of the pleading, viz. prædict' A. B. defendit vim & injuriam, &c.

For example, in a personall action brought by A. B. against C. D. the defence is, & prædictus C.D. defendit vim & iniuriam quando, &c. & damna, & quicquid quod ipse defendere debet, &c.

¶ Item si vn Villeine soit demandant ẽ action real, ou plaintife en action psonal, ẽuers son Sñr, sile Sñr voile plede en disabilitie de son pson, il ne poit faire pleine defence, mes il defendera forsqz tout force & demandera iudgement sil serra respondus, & monstre son matter maintenant, comt il est son villein, & ddera iudgement sil serra respondue.

ALso if a Villeine be demandant in an action real, or plaintife in an action personall against his Lord, if the Lord will plead in disability of his person, hee may not make plaine defence, but hee shall defend but the wrong and the force, & demand the iudgement if he shall be answered, and shew his matter by and by how hee is villeine, and demand iudgement if he shall be answered.

In this defence there bee three parts to be considered, First, when he defendeth the wrong and the force, this hath a double effect, viz. to make himselfe partie to the matter, and this is the reason, that the defendant in this and the like actions can plead no plea at all before he makes himselfe partie by this part of the defence, as it appeareth here by Littleton, that (a) if the defendant will plead in disabilitie of the person of the Plaintiffe he must first make himselfe partie by this first part of the defence, Neither can hee plead to the iurisdiction of the Court without this part of the defence. Secondly (b) By the defence of the Dammages, he affirmeth that the Plaintiffe is able to sue, and (vpon iust cause) to recouer dammages. Thirdly, And by the last part, viz. and all that which hee ought to defend, when and where he ought, he affirmeth the iurisdiction of the Court, Et sic de similibus. And of such necessitie is it for the Tenant or Defendant to make a lawfull defence, as (c) albeit he appeareth and pleads a sufficient barre without making defence, yet iudgement shall be giuen against him.

(a) 40.E.3.36.14.H.6.18. 35.H.6.12. 1.E.4.15.

(b) 29.E.3.23. 8.H.6.3.

(c) 36.H.6.iudgement 58.

(d) If Villenage be pleaded by the Lord in an action reall, mixt or personall, & it is found that he is no Villeine, the bringing of a Writ of Error is no enfranchisement, because thereby he is to defeat the former iudgement, and if in the meane time, the Plaintiffe or Demandant bring an action against the Lord, he need make no protestation, so long as the record remaines in force, for at that time he is free, but the Lord shall be restored to all by a Writ of Error.

(d) 18.E.4.6.& 7.

Sect. 196.

Bract. lib. 3. fol. 421. Britton, cap. 49. fol. 125. Mirror, cap. 2. sect. 18.

¶ *VN est lou Villein suist action, &c.* Littleton here

¶ Item 6. maners de homes y sont queux sils suont ac-

ALso there are six maner of men who if they sue iudgement tion

tion, iudgement poit eſtre demand ſils ſerrõt reſpondus, &c. Un eſt, lou villeine ſuiſt action enuers ſon Seignior, come en le cas auantdit.

may bee demanded, if they ſhall bee anſwered, &c. One is where a villeine ſueth an Action againſt his Lord, as in the caſe aforeſaid.

rehearſeth 6. kinde of diſabilities of the perſon, diſabling him to ſue any action reall, perſonall or mixt. 13.H.4.Suretie 12.d. Gardian ſhall diſable.

¶ *Sils ſerront reſpondus.* This is the legall concluſion of the Plea, when the plea is in diſabilitie of the perſon. And of the verbe reſpondere came reſponſalis often vſed in the ancient Authors of the Law. (f) Reſponſalis was he, that was appointed by the Tenant or Defendant, in caſe of extremitie and neceſſitie, to alleage the cauſe of the parties abſence, and to certifie the Court vpon what triall he will put himſelfe, viz. the Combate or the Countrey. So as his power was more than the Eſſoinor which caſteth an Eſſoigne only to excuſe the abſence of the partie, as an eſtranger which caſteth a protection, doth. For by the Common Law, the Plaintife or Defendant, Demandant or Tenant could not appeare by Attorny without the Kings ſpeciall warrant by Writ or Letters Patents, but ought to follow his Suit in his owne proper perſon (by reaſon whereof there were but few Suits) (g) Abuſion eſt a receiner Attorny ſans breue de la Chancerie. And therefore Bracton ſaith truly, (h) Attornatus hæc omnia facere poteſt (that is, plead all manner of pleas) Eſt igitur magna differentia inter Attornatum & Reſponſalem. So as the Statutes that giue the making of Attorneyes, haue worne out Reſponſales. Now what manner of men Attorneyes ought to be, or rather what they ought not to be, heare what Antiquitie hath ſaid, (i) Attorneyes poient eſtre touts ceux aux queux ley voile ſuffer, feme ne poient eſte Attorneyes, ne enfans, ne ſerfs, ne nul que eſt en garde ou autrement faut de foy, ne nul criminous, ne nul eſſoigne, ne nul que neſt a le foy le Roy, ne nul que ne poet eſte Counter, &c.

(f) Pract. lib. 4. fo. 212. b. & lib. 5. fol. 349. Fleta lib. 6. ca. 11. Glanuill lib. 11. cap. 1. Britton cap. 126. Vid. W. 1. c. 43. F.N.B. 25. C. Regiſt 9.

(g) Mirr. ca. 5. ſect.

(h) Bracton vbi ſupra.

(i) Mirror, ca. 2. ſect. 21.

Sect. 197.

¶ Et ii. eſt lou vn home eſt vtlage ſur action dõ det, ou Treſpas, ou ſur auk ack, ou Indictment, le Tenant ou defendant poit monſtre tout le matter de record, & lutlagarie, & demaunde iudgement ſil ſerr̃ reſpondue, pur ceo que il eſt hors de la ley de ſuer̃ aſcun action durant le temps que il ſoit vtlage.

THe 2. is, where a man is outlawed vpon an Action of Debt or Treſpaſſe, or vpon any other action or indictment, the tenant, or the defendant may ſhew all the matter of Record and the Outlawrie, and demand iudgement if he ſhall be anſwered, becauſe hee is out of the Law to ſue an Action during the time that he is outlawed.

¶ *Et 2. eſt (k) lou vn home eſt vtlage, &c.* But theſe generall words receiue a diſtinction, viz. (l) if an Executor or an Adminiſtrator ſueth any Action, Utlarie in the Plaintife ſhall not diſable him, becauſe the Suit is In auter droit, that is, in the right of the Teſtator, and not in his owne right. And for the ſame reaſon, (m) a Maior and Communaltie ſhall haue an action though the Maior be outlawed. (n) In a Writ of Error to reuerſe an Utlarie, Utlarie in that ſuit, or at any ſtrangers ſuit ſhall not diſable the plaintife, becauſe if hee in that action ſhould be diſabled, if he were outlawed at ſeuerall mens ſuits, he ſhould neuer reuerſe any of them. (o) In an Attaint Outlarie in the Plaintife cannot be pleaded in diſabilitie of the perſon. (p) Outlarie in Cheſter or Durham ſhall not diſable the Plaintife in any Court at Weſtminſter, &c. (q) Minor vero & qui infra ætatem 12. annorum fuerit, vtlagari non poteſt, nec extra legem poni, quia ante talem ætatem non eſt ſub lege aliqua nec in decenna. (r) He that is abiured the Realme may be diſabled, for that he is extra legem, and yet he is not properly outlawed.

(k) Bracton lib. 5. fol. 421. Britton ca. 22. fol. 39. Mirr. ca. 3. de exceptions a prouors ca. 4. defaults puniſhable.

(l) 21.E.4.49 b. 21.H.6.30.b. 14.H.6.15.

(m) 12.E.4.fol.12.

(n) 7.H.4.40. Vlary in an action perſonall allowed in this plt in an Attaint ſhalbe taken as a void plea. 23.H8.ca.3.

(o) 21.H.8 c.3. 2.H.7.7.

(p) Mirror ca.3. acc. 12.E.4.16. 33.H.6 ca.3.

(q) Bract. lib.3 fo.125. 3.H.5. Vtlagarie 11. 38.E.3.5.

(r) Britton fo.39.

¶ *Monſtre tout le matter de record.* Here note two things firſt by this word, (Monſtre) that (ſ) when any man pleads an Utlarie in diſabilitie of the perſon, that hee muſt ſhew

(ſ) 20.E.2.Coron.232. 19.Aſſ.p.10. 3.H.6.15.b. 37.H.6.23. 5.H.7. 6.Eliz.Dyer 228.F.N.B. 244.Stanf. Pl. Coro. 105.

shew forth the Record of the Outlawrie, maintenant sub pede sigilli. (because the Plea is but dilatorie) vnlesse the Record be in the same Court. But if he plead an Outlawrie in barre, if it be denied, he shall haue a day to bring it in.

(t) 28 Ass. 49. 12 E 3. Vtlagarie 3. M. 4. & 5 E. Dyer 222. 38. E 3. 13.

Secondly, (t) before the Defendant can disable the Plaintife, the Outlawrie must appeare of Record and the Iudgement after the Quinto exactus giuen by the Coroners in the Countie Court, is not sufficient, vntill the Writ of Exigent be returned, & the Outlawrie appeare of Record: which is manifest by Littletons owne words, (viz.) Matter de Record, whereof see more hereafter, Sect. 503.

It is to be obserued, That there be two kinde of appearances before the Quinto exactus, to auoid the Outlawrie, viz. an Apparance in deed, that is, to render himselfe, &c. And the other is by an apparance in Law, (u) that is, by purchasing a Supersedeas out of the Court where the Record is, which is an apparance of Record: and therefore though it be not deliuered to the Sherife before the Quinto exactus, yet it shall auoid the Outlawrie, and so are the bookes that speake hereof to be intended.

(u) Tr. 44. El. in Com. Banc. inter Mere & Dolburie. 33 H. 6. 1. 11. H. 4. 31. Dyer 3. El. 192. 5. El. 222. 4 H. 4. 1. case. 8. H. 4. 17. 37. H. 6. 17. 33. E. 3. Err. 77. 21. H. 6. 20.

(w) 33. H. 6. 19. b. &c.

(w) If a man be outlawed at the suit of one man, all men shall take aduantage of this personall disabilitie. And so it is in case of Alienage, and of Excommengement: but otherwise it is in case of Villenage, for that disabilitie is onely giuen to the Lord.

(x) 44 E 3. 37.

¶ *Durant le temps que il est vtlage.* (x) If the Defendant plead an Outlawrie in the Plaintife, in disabilitie of his person, and the Plaintife after that Plea pleaded, purchase a Charter of Pardon, because the Charter hath restored him to the Law, the Defendant shall answer. So note, the disabilitie abateth not the Writ, but disableth the Plaintife vntill he obtaineth a Charter of Pardon, and so it appeareth here by Littleton.

(y) 9. El. Dyer 262. 7 H. 4. 4. b. Stanf. Pl. Coron 188. Lib. 5. fo. 109. in Foxleyes case. 28 E 3 92. 29. Ass. p. 47. 63. 30. H 6. 5

¶ *Iudgement si ferrare sponde.* (y) If the ground or cause of the Action be forfeited by the Outlawrie, then may the Outlawrie bee pleaded in barre of the Action, as in an Action of Debt, Detinue, &c. But in reall Actions, or in personall, where dammages be incertaine, (as in Trespasse of Batterie, of Goods, of breaking his Close, and the like) and are not forfeited by the Outlawrie, there Outlawrie must be pleaded in disabilitie of the person.

(z) Mir. c. 1. Sect. 3. & c. 3. & 4. sepe ca. 5. sect. 1.

(z) And it is to be obserued, That in the reigne of King Ælfred, and vntill a good while after the Conquest, no man could haue been outlawed but for Felony, the punishment whereof was death: but now the Law is changed, as it appeareth by that which hath beene said, and hereby you shall vnderstand old bookes and Records which say, That an outlawed man had Caput Lupinum, because he might be put to death by any man, as a Wolfe that hatefull beast might. (*) Vtlagatus & waiuiata capita gerunt lupina, quæ ab omnibus impune poterunt amputari, merito enim sine Lege perire debent, qui secundum legem viuere recusant. And another saith, (a) Vtlage pur felonie teigne leu pur loup, & est criable Woolfeshered, pur ceo que loupe est beast hay de touts gents, & de ceo en auant list al ascun de le occire ou faer del loup dont custome soloit este de Porter les testes al chiefe lieu del Countie, ou de la Franchise, & soloit leu suoire dun man del Countie pur chescun teste de vtlage & de loupe. And this agreeth with the Law before the Conquest, (b) Vtlagatus lupinum gerit caput, quod Anglicè, Wolfeshead dicitur, & hæc est Lex communis & generalis de omnibus vtlagatis. (c) But in the beginning of the reigne of King Edward the third, it was resolued by the Iudges, for auoiding of inhumanitie, and of effusion of Christian bloud, That it should not be lawfull for any man but the Sherife onely, (hauing lawfull warrant therefore) to put to death any man outlawed, though it were for Felony, and if he did, he should vndergoe such punishments and paines of death, as if he had killed any other man, and so from thencefoorth the Law continued vntill this day: (Note Wolfeshead, and Wulferford is all one) * And after in Bractons time, and somewhat before, Processe of Outlawrie was ordained to lye in all Actions that were Quare vi & armis, which Bracton calleth Delicta, for there the King shall haue a Fine. But since, by diuers Statutes, Processe of Outlawrie doth lye in Account, Debt, Detinue, Annuitie, Couenant, Action sur le Statute de 5. Rich. 2. Action sur le Case, and in diuers other Common or Ciuill Actions. But now let vs heare what Littleton will say vnto vs.

(*) Fleta lib. 1. ca. 27. Bract. li. 3. fol. 421. Britton fol. 20. b.

(a) Mir. ca. 4. sect. defaults punishable.

(b) Lamb. fol. 118.

(c) 2. Ass. P. 3. 2. E. 3. tit. Coron. 148.

* Bracton, lib. 3. fo. 421. 3. H. 6. 9. b. 40. E. 3. 5. 35. H. 6. 6. 40. E. 3. 2.

Sect. 198.

(a) Bract. li. 3. fol. 415. 427. Mir. c. 1. sect. 3. c. 3. sect. 1. & ca. 3. except 2 prouors. Flet. li. 6. c. 47. Brit. fo. 29. 13. E. 3. Brit. 677. 25. E. 3. de Natis vltra mare. 31. E. 3. Cosinage 5. 42. E. 3. 2. 9. E. 4. 7.

¶ *Alien.* (a) Alienigena is deriued from the Latine word Alienus, and according

¶ E 3. est, vn Alien que est née hors de la ligeance

THe third is, an Alien which is borne out of the ligeance of

noſtre

nostre Seignior le Roy, si tiel alien voile suer vn Action reall ou personall, le Tenant ou Defendant poit dire que il fuit née en tiel pais, que est hors ô la ligeance le Roy, & demaund iudgement si il serra respondue.

our Souereigne Lord the King, if such alien will sue an action reall or personall, the tenant or defendant may say, That hee was borne in such a Countie which is out of the Kings Allegeance, and aske Iudgement, if he shall be answered.

11.H.4.26.14.H.4.19.20. 3.H.6.55. 22.H.6.38. Stanf. Pl. Cor. 197.a. Lib.7. fo.1. Calums case. Pl Com.268. per Sanders. Vid. fol.1.439.140 441.

to the Etymologie of the word, it signifieth one borne in a strange Countrey, vnder the obedience of a strange Prince or Countrey, (And therefore Bracton saith, That this exception, Propter defectum Nationis, should rather be Propter defectum subiectionis) or as Littleton saith, (which is the surest) Out of the ligeance of the King. Note, here Littleton saith not Hors del Realme, but Hors de liegeance; for he may be borne out of the Realme of England yet within the liegeance. And he that is borne within the Kings liegeance is called sometime a Denizen quasi deins nee, borne within, and thereupon in Latine called Indigena, the Kings Liegeman, for Ligeus is euer taken for a naturall borne subiect. But many times in Acts of Parliament, Denizen is taken for an Alien borne, that is infranchised or denizated by Letters Patents, whereby the King doth grant vnto him, (b) Quod ille in omnibus tractetur, reputetur, habeatur, teneatur, & gubernetur, tanquam ligeus noster, infra dictum Regnum nostrum Angliæ oriundus, & non aliter, nec alio modo. But the King may make a particular Denization: (c) As he may grant to an Alien, Quod in quibusdam Curiis suis Angliæ audiatur vt Anglus, & quod non repellatur per illam exceptionem quod sit alienigena & natus in partibus transmarinis, to enable him to sue onely. The seuerall senses of which word must bee gathered, ex antecedentibus, adiunctis, & consequentibus, and they that take him in that sense, derive the word from Donaison (i) Donatio, because his freedome is giuen vnto him by the King.

(b) 9.E.4. f.8. Pl. Com. 130.b.

(c) Roc. Parl. 22.E.1. Elias de Daubenie.

+ Rep. 7. fo: 18. Calvin's case.

There is another kinde, and that is an Alien naturalized, and that must be by Act of Parliament. And this Alien naturalized to all intents and purposes, is as a naturall borne subiect, and differeth much from Denization by Letters Patents, for if he had issue in England before his Denization, that issue is not inheritable to his father: but if his father be naturalized by Parliament, such issue shall inherit. So if an issue of an Englishman be borne beyond Sea, if the issue be naturalized by Act of Parliament, he shall inherit his Fathers Lands; but if he bee made Denizen by Letters Patents, he shall not, and many other differences there bee betwixt them.

¶ *Ligeance.* à Ligando, Being the highest and greatest obligation of dutie and obedience that can be. Liegeance is the true and faithfull obedience of a Liegeman or Subiect, to his Liege Lord or Soueraigne. Ligeantia est vinculum fidei, ligeantia est legis essentia.

Vid. Calvins case. vbi sup.

Ligeantia Domino Regi debita est duplex

- Perpetua
  1. Originaria, siue naturalis, siue nata, (d) and this is always absolute and incident inseparable, nemo patriam in qua natus est exuere, nec ligeantiæ debitum eiurare possit.
  2. Data, aut per denizationem, aut per naturalizationem (vt supradictum est) ista ligeantia per denizationem potest esse sub conditione.
- Temporanea aut
  - Localis, quia quilibet alienigena qui in hoc Regno sub protectione Regis degit, Domino Regi ligeantiam debet. And if he be indicted of high Treason, the Indictment shall say, (e) Contra Ligeantiæ suæ debitum, & ideo dicitur temporanea & localis, quia non durat nisi quousque infra Regnum moratur.
  - Limitata, As when one is made Denizen for life or in tayle, (f) but one cannot be naturalized either with limitation for life, or in tayle, or vpon condition: for that is against the absolutenesse, puritie, and indebilitie of naturall Allegiance.

(d) 13.El.Dier fo.300.b. Doctor Stories case.

(e) 3.& 4.P.& M.Dl.144. L.7.fo.6.&c. Calvins case.

(f) 9 E.4.7. Calvins case vbi supra.

* 13.E.3.br.264. 20 E.3. Annuitie 24. 17.E.3.12. 40.E.3.10 27.Ass.48. 14.H.4.37. 22.E.4.44. 21.H.7.7. Stanf.Prer. 54. Lect. de Carlile. 35.E.1.

*An Abbot, Prior, or Priorelle Alien, shall haue Actions reall, personall, or mixt, for any thing concerning the possessions or goods of his Monasterie herein England, though hee bee an Alien borne out of the Kings Ligeance, because he bringeth it not in his owne right,

but in the right of his Monasterie, and not in his naturall but in his politique capacitie.

(h) Bracton 426.427.430. 8.E.3.51. 5.E.2. Aiel.8. 13.E.3.Bre 677. 22.E.3 14.20.21.E.3. Cosinage 5.42 E 3 2. 13 E 4 9 11 H.4.26. 9 E.4.7 19.H.6.7. 20 E.4.6. 13.E.4.9 10. 32.H 6 23.38.H 8.Br. Denizen, 10. 1.E.6. Nonhab. Br.13 &62. Vid. 1.H 3. Dower 179. 6 E.3.263. 31.H.6.c.2.4. Liure de Entries in electt. 7.6.H 8.Dier 2. 6.H.7. 25.

¶ *Reall ou personall.* (h) In this case the Law doth distinguish betweene an Alien that is a subiect to one that is an enemy to the King, and one that is subiect to one that is in league with the King, and true it is that an Alien enemie, shall maintaine neither reall nor personall Action, Donec terræ fuer' communes, that is until both Nations be in peace; but an Alien that is in league shall maintaine personall actions, for an Alien may trade and traffique, buy and sell, and therefore of necessitie he must be of abilitie to haue personall actions, but he cannot maintaine either reall or mixt actions. An Alien that is condemned in an information shall haue a Writ of Error to releeue himselfe, Et sic de similibus.

* If an Alien be made a Prior or Abbot, the plea of Alienance shall not disable him to bring any reall or mixt action concerning his house, because he is in auter droit, as before is said.

* 29.E.3 Br. Denizen 15. Vid.Stanf.Pl.Cor.197.a.

¶ *Hors del ligeance nostre Seignior le Roy.* Here Littleton doth not say, out of the Realme or beyond the Sea, (as he doth Sect.439.440.441.677.) But out of the Ligeance; for (as hath beene said before) a man may be borne out of the Realme, viz. of England, as in Ireland, Iersey, and Gernsey, &c. and yet seeing he is not borne out of the Ligeance of the King, as Littleton here speaketh, he is no Alien. But hereof there is so much and so plentifully spoken in our bookes, and especially in the case of Calvin vbi supra, as this shall suffice.

(i) Liure d' Entries Alien 1.

¶ *Et demaund iudgement sil serra respondue.* So as the Tenant or Defendant shall neither plead Alien nee to the writ or to the Action, but in disabilitie of the person, as in case of Villenage and Outlawrie before. (i) And Littleton is to bee intended of an Alien in league, for if he be an Alien enemy the Defendant may conclude to the Action.

Sect. 199.

¶ *Præmunire.* Some hold an opinion that the writ is called a Præmunire, because it doth fortifie Iurisdictionem jurium regiorum Coronæ suæ of the Kingly Lawes of ỳ Crowne against forreine iurisdiction, and against the vsurpers vpon them, as by diuers Acts of Parliaments appeare. But in truth it is so called of a word in the Writ, for the words of the Writ de Præmunire facias præfatum A. B. &c. quod tunc sit coram nobis, &c. where Præmunire is vsed for præmonere and so do diuers interpreters of the Ciuill and Canon Law vse it, for they are præmuniti that are præmoniti. By the Statutes before quoted in the margent you shall perceiue what statutes were made before Littleton wrote, and what haue beene ordained since to make offences in danger of a Præmunire.

For Statutes.
Vid.35.E.1.stat de Carlile.25.E.3.c.22. 5 E 3. stat.de prouisors. 27 E 3. c.1. 38.E.4.ca.3. 2.R.2. ca.12. 1.R.2.c.3. 12 R.2. c.5.16.R.2.c.5. 2.H.4. c.3.& 4. 6.H.4.ca.1. 24.H.8.c.12. 25.H.8.ca. 19.20. 26.H.8.c.16. 1.Eliz.ca.1. 5.Eliz.c.1. 13 Eliz.ca.1.2.8. 27.Eliz.c.2.39.Eliz.c.18.

For Presidents.
Vide Mich.29.E.3.coram Rege in Thesaur. Patch. 44.E.3. Ibid. Melbornes case. Mich.38.H.6. ibid. The case of Rich. Beauchamp and others. Hill.25.H.8.coram Rege. The case of Nic. Bishop of Norwich. Trin.36.H.8. Rot.9. Coram Rege. The case of the Bishop of Bangor. Mich.26.& 27.El.coram Rege, Perrot against D. Beuance & others. Booke of Entries, fo.429.& 430. & ibid. Mich.9.H.7.f.23.

Booke cases.
21.E.3.40.b. 18.H.6.6. 9.E.4.2.35.E.3.7 24.H.8. tit.Præmunire 16. 10.H.4. 12.17.E.3.84. 6.H.7.14. 44.E.3.35.

¶ *Hors del protection le Roy.* The iudgement in a Præmunire is that the Defendant shall bee from thencefoorth out of the Kings protection, and his Lands and Tenements, goods and chattels forfeited

¶ Et 4. est, vn hõe q̃ per iudge, done enuers luy sur vn briefe de Præmunire facias, &c. est hors de protection le Roy, si il suist ascun action, & le Tenant ou le def. mꝫa tout le Record enuers luy, il poit demaund iudgement sil serra respondu, car la ley le Roy, & les bꝛs le Roy, sont les choses per queux home est protect & aide, & issint durant l' temps que home en tiel cas est hors de la protection le Roy, il est hors de estre aide ou ꝓtect per le ley le Roy, ou per bꝛe le Roy.

THE 4. is, a man who by iudgement giuen against him vpon a Writ of *Præmunire facias, &c.* is out of the Kings protection, if hee sue any action, and the tenant or defendant shew all the Record against him, hee may aske iudgement if hee shall be answered, for the Law and the Kings writs be the things by which a man is protected and holpen, and so during the time that a man in such case is out of the Kings protection, hee is out of helpe and protection by the Kings Law, or by the Kings writ.

forfeited to the King, & that his body shall remaine in prison at the Kings pleasure. So odious was this offence of Præmunire, that a man that was attainted of the same might haue beene slaine by any man without danger of Law, because (k) it was prouided by Law, that a man might doe to him as to the Kings enemy, and any man may lawfully kill an enemy. But Queene Elizabeth and her Parliament * liking not the extreme and inhumane rigor of the Law in that point did prouide that it should not be lawfull for any person to slay any person in any manner attainted in or vpon any Præmunire, &c. Tenant in taile is attainted in a Præmunire, he shall forfeit the land but during his life, for albeit the Statute of 16 R.2 ca.5. enacteth, that in that case their lands and tenements, goods and chatteis shall be forfeit to the King, that must be vnderstood of such an estate as he may lawfully forfeit, and that is during his owne life. And these generall words doe not take away the force of the Statute De donis conditionalibus, but he shall forfeit all his Fee simple lands, states for life, goods and chatteis, and so was it resolued in Trudgins case.

11.H.7. tit. Præmunire, F.5. 17.H.7. Iustice Spilmans in Turberuiles case. Kelwey, fo. 195. Doct. & Stud. lib.2.cap.32. Brooke, tit. Præmunire, 21 Temps E. 6. Bishop Barloes case.

(k) 24.H.8. Brooke. Coron. 196.

* 5.Eliz ca.1.

Hill.21 Eliz. Trugins case resolued per les Iustices, 7.H.4.10. Simon Beuerleys case.

¶ *Car la ley le Roy & les briefes le Roy, &c.* There bee three things as here it appeareth whereby euerie subiect is protected, viz. Rex, Lex, & Rescripta Regis, the King, the Law, and the Kings Writs. The Law is the rule, but it is mute; The King iudgeth by his Iudges, and they are the speaking Law, Lex loquens. The processe and the execution which is the life of the Law consisteth in the Kings Writs. So as he that is out of the protection of the King cannot be aided or protected by the Kings Law, or the Kings Writ, Rex tuetur legem, & lex tuetur jus. (l) Besides, men attainted in a Præmunire, euerie person that is attainted of high treason, petit treason or felony, is disabled to bring any action, for he is * Extra legem positus, and is accounted in Law Ciuiliter mortuus.

(l) 4.E.4 8. 1.E.4.1.b. 30 E.1 4.8 Eliz. Dier 245. * Mich.9 E 3. coram rege Rot.84 Warw.

It is to be vnderstood that there is a generall protection of the King, whereof Littleton here speaketh, and this extends generally to all the Kings loyall Subiects, Denizens and Aliens within the Realme, whose offences haue not made them vncapable of it, as before it appeareth. And there is a particular protection by Writ, which is one of the Kings Writs that Littleton here speaketh of. This particular protection is of two sorts, one, to giue a man an immunitie or freedome from actions or suits, the second, for the safetie of his person, seruants and goods, lands and tenements whereof he is lawfully possessed from violence, vnlawfull molestation or wrong. The first is of right, and by Law, the second are all of grace, (sauing one) for the generall protection implyeth as much. Of the first sort some are Cum clausula (volumus) so called because the Writ hath this word (volumus) in it, viz. Volumus quod interim sit quietus de omnibus placitis & querelis, &c. And the other a protection Cum clausula (nolumus) so called for the like reason. Of protections Cum clausula (volumus) for staying of pleas and suits there be foure kindes, viz. Quia profecturus (so called by reason they are part of the words of the Writ) 2. Quia moraturus (so named for distinction for the like cause) 3. Qua indebitatus nobis existit of the matter. 4. When any sent into the Kings seruice in Warre is imprisoned beyond Sea. The former are for staying of actions and suits in generall. The third is for staying of suits of the subiect for debts and duties due by the Kings debtor to them. Of the fourth you shall read hereafter in this place. For the former two these nine things are to bee obserued. First, for what cause they are to be granted. 2. For what persons they are allowable. 3. A threefold time is to be considered, viz. the time of the purchase of them, the time of the continuance of them, and the time when they shall be cast. 4. In what place the seruice is to bee performed. 5. In what actions these protections are allowable. 6. Vnder what seale and to whom they are directed. 7. Who is to allow, or disallow of them. 8. By whom they are to be cast and in what manner. 9. How vpon iust cause they may be repealed or disallowed. I must but point at these matters to make the studious reader capable of them, and referre him to the Bookes and other Authorities at large being excellent points of learning. As to the first, it is of two natures, the one concerne seruices of war as the Kings souldier, &c. the other wisdome and counsell, as the Kings Imbassadour or Messenger Pro negotiis regni, both these being for the publique good of the Realme, priuate mens actions and suits must be suspended for a conuenient time; for, Iura publica anteferenda priuatis; and againe, Iura publica ex priuatis promiscuè decidi non debent. (a) And the cause of granting of the protection must be expressed in the protection, to the end it may appeare to the Court that it is granted Pro negotiis regni & pro bono publico, (b) or as some others say, pur le common profit del realme. And Britton said, Nostre seruice, si come estre en nostre force, & le defence de nous & de nostre people, &c. * A man in execution in salua custodia shall not be deliuered by a Protection.

Protection { Generall. Particular.

Of the Generall, vid. li.7. Caluins case per totum.

(a) 39.H.6.39. 3.H.6. tit. protection 2. 13 R.2. c.2.16.

(b) Mirror, cap.3.sect. Britton, 281. Fleta lib. 6. cap.7.8.&c. Bracton. * 5. Marie Dyer 162.

(c) To the second these protections are not allowable only for men of full age, but for men within age, and for women, as necessarie attendants vpon the Camp, and that in three cases, Quia lotrix, seu nutrix, seu obstetrix.

(c) 19.H.6.51. 30.E.3.24. F.N.B.28.I. 11.E.3.Rot. pat.3.part for the Countesse of Warw.

(d) Corporations aggregate of many are not capable of these two protections either Prosecturæ, or Moraturæ, because the Corporation it selfe is inuisible, and resteth onely in con-

(d) 30.E.3.3. 21.E.4.36. 21.E.3.27.

consideration of Law. (c) Protection for the Husband shall serue also for the Wife.

(t) Albeit the Vouchee, Tenant by receit, Prier in aid or Garnishee bee no parties to the Writ, yet before they appeare a Protection may be cast for them, because when the Demandant grants the Vouchor or receit in iudgement of Law they are made priuie, but if the Demandant counterplead the Vouchor or receit, then vntill it be adiudged for them, and so priuie in Law, a Protection cannot be cast for them. And so it is of the Garnishee, a Protection may be cast for him at the day of the returne of the Scire fac: (g) No Protection can be cast for the Demandant or Plaintife, because the Tenant or Defendant cannot sue a Resommons, or a Re-attachment, but the Plaintife only that sued out the sommons or attachment, &c. must sue also the resommons or re-attachment. And so it is of an Actor in nature of a Plaintife, &c. as the Garnishee after appearance, and an auowant, and the like. (h) An Officer of the Kings receit or any other Officer in any Court of Record, whose attendance is necessarie for the Kings seruice or administration of Iustice being sued, cannot haue a Protection cast for him.

(i) In euerie action or plea reall or mixt against two (where a Protection doth lye) a Protection cast for the one doth put the plea without day for all. So it is in debt, detinue and account. But in trespasse, or in any action in nature of trespasse, which is in Law seuerall, where euerie one may answer without the other, there a Protection cast for the one shall serue for him onely, vnlesse they ioyne in pleading, or if they plead seuerall pleas, and one Venire facias is awarded against all, there a Protection cast for one, shall put the plea without day for all, and therefore in former times the Plaintife vsed to sue out seuerall Venire fac' in those cases for feare of a Protection, &c.

(k) As to the threefold time, First, a Protection Prosecturæ, regularly must not be purchased hanging the plea, but this faileth when he goeth in the Kings seruice in a Voyage royall, and that is twofold, either touching warre, and that onely is when the King himselfe or his Lieutenant, that is Prorex goeth, or when any goeth in the Kings ambassage, Pro negotio regni, or for the marriage of the Kings daughter or the like, this also is called a Voyage royall. But a Protection Moratur may be purchased, and cast pendente placito.

(l) Regularly a Protection cannot be cast but when the partie hath a day in Court, and when if he made default, it should saue his default: therefore when execution is to bee granted against body, lands or goods, no Protection can be cast because the Defendant hath no day in Court. If a Protection be cast at the Nisi prius for one, if before the day in banke it be repealed by Innotescimus, yet because it was once well cast, it shall saue his default, but if the Protection be disallowed, either for variance, or that it lay not in the Action, or the like, there it shall turne to a default.

If a man hath a Protection, and notwithstanding plead a plea, yet at another day of continuance, after that a Protection may be cast, so at a day after an Exigent, but after appearance he cannot cast a Protection in that Terme vntill a new continuance be taken.

(n) Thirdly, no Protection either Prosecturæ or Moraturæ, shall indure longer than a yeare and a day next after the teste or date of it. And so it is of an Essoigne de seruice le Roy. If a Protection beare teste 7. die Ianuarii, and haue allowance pro vno anno, the resommons, re-attachment or regarnishment may be sued 8. Ianuarii the next yeare, and yet that is the last day of the yeare.

And where Britton treating of an Essoigne beyond the Græcian Sea in a Pilgrimage, &c. saith thus, (o) Ascun gent nequident se purchasent nous letters de protection patents durable a vn an, ou a 2. ou a 3. ans, & ia lameyns font attorneys generals, ausi per nous letters patents: & ceux font bien & sagement, car nul grand Seignior ne chiualier de nostre realme ne doit prender chemyn sauns nostre conge, car issint poet le realme remainer disgarny de fort gente.

Three things are hereupon to be obserued, First, that this was a protection of grace, whereof more shall be said hereafter. Secondly, that it was for safetie of the great men of the realme, and that they should make generall Attorneyes, so as no actions, or suits should be thereby stayed. Thirdly, (by the way) that great men could not passe out of the Realme without the Kings licence. (p) A Protection granted to one, &c. vntill hee returned from Scotland, was disallowed for the incertaintie of the time.

(q) To the fourth, the Protection as well Moraturæ as Prosecturæ must be regularly to some place out of the Realme of England, and that must be to some certaine place, as super salua custodia Caliciæ, &c. and not to Carlisle or Wales, which are within the Realme, or the like. But it may be to Ireland or Scotland, because they are distinct Kingdomes, or to Calice, Aquitaine, or the like, but a Protection, Quia moratur super altum mare, will not serue, not only because (as some thinke) that mare non moratur, but for the incertaintie of the place, and for that a great part of the sea is within the Realme of England.

(r) To the fifth. In some actions, Protections shall not be allowed by the Common Law, & in some actions they are suffred by Act of Parliament, Actions at the Common Law, as all Actions that touch the Crowne, as Appeales of Felony, and Appeales of Mayhem. (s) So where

(c) 35.H.6.3. 43.E.3.23. 48.E.3.7. 4.H.5. protection 107.
(t) 45.E.3 protect.37. 3.H.6. 18.30. 8.H.6.18 9.H.6.36. 40.E.3.18. 31.E.3. protect. 34. 21.E.3. 14.H.4.16. 45.E.3.tit protect.40. 14 E 3 protect.66.
(g) 24.E 3.26. 47.F.2.5. 5 H.5.5. 38.E.3 1.F.N.B. 28 g.20.R 2. protect.106. 22.H.6.28. 9.H.6.36. 43.E. 3.35. 17.E.3 24.25 E.3.43. 24.E.3.26.13 E.3.protection 71. 14.E.3.ibid.65.63. 20.E 3.ibid 84.
(h) 7.H.4 3.2.
(i) 19 E.3. protect.80.81. 32 E 3.ibid.55. 16.E.2.ibid. 77. 13 E.3 ibid.70. 41.E.3. ibid.95. 41.E 3 32. 42.E.3.9. 5 H.5.7. 3.H.4.15. 2 R.2. protect.45. 43.E 3.ibid 31. 2 H.6.22. 21.H.6.41. 38.E. 3.12. 7.H.6.21 33.E.3. protect.116. 4.H.4.4. 29.E.3. 41. 45 E 3.24.28. 11.E.4 7. F.N.B.28.k.
(k) 3 H.6. protect.2. 39 H. 6.39. 44.E.3.12. 13 R.2 ca. 16 3 H.4.16. 11.H.4.7. 7 E.4.27. 28.H.6.1. 17.H.6 protect.56. 10.E.3.14. 13.E.3. amerciament 18. Lib.7.fol.7.8. Caluins case. 13 R.2.cap.16.
(l) 4.H.6.22. 17.E.3.76. 33.E.3.tit.protect.115. 31.E.3.ibid.124 27 E.3.79. 29.E.3 protect 85.88. 2.E. 4.15. 19 E.3. protect.81.79. 13.E.2.ibid.92. 9.E.3.21. 3.H.6.55. 4.H.6.22. 11.H. 6.14. 14.H.6 22. 21.H.6.10. 27 H 6.4.28.H.6.1 35.H.6. 58.44 E 3.2.16. 48.E 3.8. 7.H.4 5. 14.H.4.23. 27.E.3.78.
(m) 22.E.3.4. 16.E.3. protect.47. 44.E.3.16. 3.E.3. amerciament 18. 34.E.3. Protection 123.
(n) 39.H.6.39. F.N.B. fol.28. Fleta lib.6.cap.8. Temps E.1 grand Cape 26.
(o) Brit.fo.182.283.& 280. Fleta lib.6 cap.8.accord.

(p) 1.F.3.25.
(q) Lib.7.fol.8. Caluins case. 7.E.4.29. F.N.B.38.c.g.h. 7.H.4.14. 19.H.6.15. 28.H.6.3. 32.H.6.3.E.2. Rot.Parliament nu.21.22.E.4. protect.18. 8.R.2.ibid.125. 11.H.4.57. Regist.iudic.14. 36.H.6. tit.protect.27. 6.R.2. ibid.14. Regist.orig.88.sepe.
(r) Bract.lib.5.139.140. Britton 181. Fleta lib.6. cap. 7.8.&c. 14.E.2 protect.109. 34.E.3.ibid.122. 19.E.3. ibid.78. 33.E.3.ibid.99. 21.E.3.13.
(s) 10.H.6.Protect.105.

where the King is sole partie no Protection is to bee allowed, in like manner in a Decies tantum, where the King and the Subiect are Plaintifes, but in late Acts of Parliament Protections in personall actions are expressly ousted. A Protection may be cast against the Queene the Consort of the King.

In a Writ of Dower vnde nihil habet, no Protection is allowable, because the Demandant hath nothing to liue vpon. Otherwise it is in a Writ of right of Dower. Likewise in a Quare impedit, or Assise of Darreine presentment a protection lieth not, for the eminent danger of the lapse. Neither lieth a Protection in an Assise of Nouel disseisin, because it is festinum remedium, to restore the Disseisee to his freehold, whereof he is wrongfully and without iudgement disseised. (u) In a Quare non admisit, a Protection is not allowable, because it is grounded vpon the Quare impedit, and the like in a Certificate vpon Assise for the like reason, and sic de similibus. A protection, Qua profecturus is not allowable (as hath beene said) in any Action commenced before the date of the Protection, vnlesse it bee in a Voyage Royall. (w) An Infant is vouched, and at the Pluries venire fac, a Protection was cast for the Infant, and disallowed, because his age must be adiudged by the inspection of the Court.

(x) By Act of Parliament no Protection shall be allowed in an attaint. (But at the Common Law a Protection for one of the Petite Iurie had put the plea without day for all) nor in an Action against a Gaoler for an escape, nor for victuals taken or bought vpon the voyage or seruice, nor in pleas of Trespasse, or other contract made or perpetrated after the date of the same Protection.

(y) In a Writ of Error brought by an Infant vpon a fine leuied, the Plaintife sued a Scire facias against the Conusee, for whom a Protection was cast, and the Court examined the age of the Plaintife, and by inspection adiudged him within age, and recorded the same, and then allowed the Protection, and this can be no mischiefe to the Plaintife, whereupon it followeth, that albeit the Plaintife dieth afterwards before the fine reuersed, yet after his age adiudged and recorded, his heire shall in that case reuerse the fine for the nonage of his Ancestor. (a) And so it was resolued in the case of Kekewiche in a Writ of Error brought by him by the opinion of the whole Court of the Kings Bench, otherwise it is, if the Plaintife dieth before his age inspected.

(b) Note in iudiciall Writs, which are in nature of Actions, where the partie hath day to appeare and plead, there Protection doth lye, as in Writs of Scire facias vpon Recoueries, Fines, Iudgements, &c. albeit by the Statute of W.2. Gloignes and other delayes be ousted in Writs of Scire facias, yet a Protection doth lye in the same. So it is in a Quid iuris clamat, and the like. But in Writs of Execution, as Habere facias seisinam, Elegit, Execution vpon a Statute, Capias ad satisfaciendum, Fieri facias, and the like, there no Protection can be cast for the Defendant, because he hath no day in Court, and the Protection extendeth onely ad placita & querelas, and must bee allowed by the Court, which cannot bee but vpon a day of appearance.

(c) In a Writ of Deceit brought against him that obtained and cast a Protection vpon an vntrue surmise in delay of the Plaintife, that protection is allowable. In an Action brought vpon the Statute of Labourers a Protection doth lye, & sic de similibus.

(d) To the sixth, no Writ of Protection can be allowed, vnlesse it be vnder the great Seale, (*) and it is directed generally.

(e) To the seuenth, the Courts of Iustice where the Protection is cast, are to allow, or disallow of the same, be they Courts of Record, or not of Record, and not the Sheriffe, or any other Officer or Minister.

(f) To the eighth, the Protection may be cast either by any stranger, or by the partie himselfe, an Infant, Feme Couert, a Monke, or any other may cast a Protection for the Tenant or Defendant, and this difference there is when a stranger casteth it, and when the Tenant or Defendant casteth it himselfe. (g) For the Defendant or Tenant casting it, he must shew cause wherefore he ought to take aduantage of the Protection, but an estranger need not shew any cause, but that the Tenant or Defendant is here by Protection.

(h) As to the ninth, A protection may be auoided three manner of wayes: First, vpon the casting of it before it be allowed. Secondly, by repeale thereof after it be allowed: by disallowing of it many wayes, as for that it lyeth not in that Action, or that he hath no day to cast it, or for materiall variance betweene the Protection and the Record, or that it is not vnder the great Seale, or the like. (i) Thirdly, After it be allowed by Innoteſcimus, as if any tarrie in the Countrey without going to the seruice for which he was retained, ouer a conuenient time after that he had any Protection, or repaire from the same seruice, vpon information thereof to the Lord Chancellor, he shall repeale the Protection in that case by an Innoteſcimus. But a Protection shall not be auoided by an Auerment of the partie in that case, because the Record of the Protection must be auoided by matter of as high nature.

(u) 13 E 3. tit. protection 52. 12. E 3. ibid. 69. 31. E. 1. ibid. 112.

(w) 19. E. 3. protect 111. 32. E. 3. ibid. 54.

(x) 13. H. 8. c. 3. 34 E. 1. protection 38. 7. H. 4. c. 4. 1 R. 2 cap. 8.

(y) 21. E. 3. 24 31. E. 3 protect. 97. 1. 5. E. 4. 50. 35. H. 6. 43. 46. 8. E. 4. 8. 17 E. 3. 12. 13. E. protect. 3. 73.

(a) Pasch. 12. Ia. regis in the Kings Bench.

(b) 13 E 3. protect. 72. Fleta l. 2. c. 12. 40. E. 3. 18. 48 E 3. 18. 19 37. H. 6. 31. 21. E. 4. 19. 15. H. 7. 8. 47. E. 3. 5. 17. E. 3. 68. 14. E. 3 protect. 64. W. 2. cap. 45.

(c) 20 E. 3. protect. 83.

(d) 35 H. 6. 2. Artic. super Cart. 6. 46. E. 3. petition 19.

(*) Lib. 2. f. 17. Lanes case. Lib. 8. f. 68. Trollops case. 20. H. 6. 25. 2. E. 4. 4. 38. H. 6. 23.

(e) 43. E. 3. protect. 96.

(f) 21. E. 4. 18.

(g) 38. H. 6. 23.

(h) 44. E. 3. 12. 47. E. 3. 6.

(i) 13. R. 2. c. 16. 11. H 4. 70. 7. H 6 22. 12. H. 6. 50. 30. H. 6. 3. 19. H. 6. 45. 21. E. 4. 20. 1. H. 6. 6. 42. E. 3. 9. 44. E. 3. 2. 39. E. 3. 4. 5. 20. E. 3. protect. 86. 31. E. 3 ibid. 119.

(k) There

(k) 44.E.3.41. 12.47 E.3.6. 34.E 3 protect.119. 28.H.6 3.31 H.6 22. 30 H 6 3.32.H.5.4.

(k) There is a clause in the Protection to this effect, Præsentibus minime valituris, si contingat ipsum, &c. à custodia castri prædicti recedere. Or si contingat iter illud non arripere, vel infra illum terminum à partibus transmarinis redire. Whereupon there be two conclusions to be obserued.

First, That though the Protection be allowed by the Court for a yeare, yet if it be repealed by an Innotescimus that the Recommons or Re-attachment shall be granted vpon the Repeale within the yeare, for the Protection that was allowed had the said clause in it. And of that opinion be our latter Bookes, and the Repeale by Innotescimus should serue for little purpose, if the Law should not be taken so.

Secondly, That albeit he that had the Protection either Moraturæ or Profecturæ, returne into England, and haply be arrested and in prison, yet if hee came ouer to prouide Munition, Habiliments of Warre, victuals or other necessaries, it is no breach of the said conditionall clause, nor against the Act of 13. Richard 2. cap. 16. for that in iudgement of Law comming for such things as are of necessitie for the maintenance of the warre, moratur, according to the intention of the Protection and Statute aforesaid. And thus much of the two first Protections, Cum clausula volumus, Profecturæ and Moraturæ.

(l) Registrum 281.b. F.N.B.28.b. 33.H.8. ca 29. in the præamble 41.E.3. tit. Execution 38. 18.E.3.ibid.96. 27.E.3.88.b. 4.E.4.16 3 Eliz.Dier 197. Rot.pat.27.E.3. part.1. m. 2.

(l) As to the third Protection Cum clausula volumus, the King by his Prerogatiue regularly is to be preferred in payment of his dutie or debt by his Debtor before any Subiect, although the Kings debt or dutie be the latter, and the reason hereof is, for that Thesaurus Regis est fundamentum belli, & firmamentum pacis. And thereupon the Law gaue the King remedy by Writ of Protection to protect his Debtor, that he should not be sued or attached vntill he paid the Kings debt, but hereof grew some inconuenience, for to delay other men of their suits, the Kings debts were the more slowly paid. And for remedie thereof (m) it is enacted by the Statute of 25. E. 3. that the other Creditors may haue their actions against the Kings Debtor, and to proceed to Iudgement, but not to Execution vnlesse he will take vpon him to pay the Kings debt, and then he shall haue Execution against the Kings Debtor for both the two debts.

(m) 25.E.3. cap.19.

This kinde of Protection hath (as it appeareth) no certaine time limited in it. But in some cases the subiect shall be satisfied before the King (n) for regularly whensoeuer the King is intitled to any fine or dutie by the suit of the partie, the partie shall be first satisfied, as in a Decies tantum. And so it in Action of Debt, the Defendant deny his Deed, and it is found against him he shall pay a fine to the King, but the Plaintife shall be first satisfied, and so in all other like cases. And so it is in Bils preferred by subiects in the Starrchamber, there costs and damages (if any be) shall be answered before the Kings fine, as it is daily in experience.

(n) 41.E 3.15.17.E.3.73. 29 E 3.83. 4 E 4.16.

The fourth protection, Cum clausula volumus, is when a man sent into the Kings Seruice beyond Sea is imprisoned there, so as neither Protection, Profecturæ, or Moraturæ, will serue him, and this hath no certaine time limited in it, (o) whereof you shall read at large in the Register, and F. N. B.

(o) Regist. sæpe. F. N. B. 28. c.

(p) Vide lib.7. fol.8,9. Caluins case.

(p) Now are we at length come to Protections, Cum clausula Nolumus, All which sauing one, are of grace, and as hath beene said are implyed vnder the generall protection, for as Fitzherbert saith, euerie loyall subiect is in the Kings Protection. Of these Protections of grace, you shall not read much in our yeare Bookes, because they stayed no Actions or Suits; (q) Of the diuers formes, of these you shall read at large in the Register, and F.N.B. which were too long and needlesse to be here recited.

(q) Register 280. &c. F.N.B. 29. A.B.C.D.E. F.G.H. Register 280. Statut. de 14.E 3. F.N.B.30.A.

The Protection Cum clausula nolumus, that is, of right, is, that euerie spirituall person may sue a Protection for him and his goods, and for the fermors of their lands and their goods, that they shall not be taken by the Kings Purueyor, nor their carriages or chattels taken by other Ministers of the King, which Writ doth recite the Statute of 14. E. 3.

Of these Protections I cannot say any thing of mine owne experience, for albeit Queene Elizabeth maintained many Warres, yet shee granted few or no Protections, and her reason was, that hee was no fit subiect to be imployed in her seruice, that was subiect to other mens actions, lest she might be thought to delay Iustice.

Sect. 200.

Entre & professe en Religion.

CLEv. est, vn home q̄ est enter & profesee en Religion: Si tiel

THe fifth is, where a man is entred and professed in Religion, if

suist

ſuiſt vn action, le tenant ou defendant poit monſtrer, que tiel eſt enter en religion en tiel lieu, en lo͂rder de Saint Benet, & la eſt moigne profeſſe, ou en lo͂rder des Friers Preachers, ou Minors, & la eſt freere profeſſe, & i̇ſint des auters o͂rders de religion, &c. & demaunder a iudgement ſil ſerra reſpondue. Et la cauſe eſt, pur ceo que quant vn home entra en religion, & eſt profeſſe, il eſt mort en ley, & ſon fits ou auter couſin maintenant luy enheritera auxy bien ſicome il fuit mort en fait. Et quant il entra en Religion il poit faire ſon teſtament, & ſes executors, les q̃ux executors aueront vn action de det due a luy deuantlentre en Religion, ou auter action que executors poient auer ſicome il fuit mort en fait. Et ſil ne fait ſes executors quant il entra en Religion, donques Lo͂rdinarie poit committer ladminiſtration de ſes biens a auters homes, ſicome il fuit mort en fait.

ſuch a one ſue an action, the Tenant or Defendant may ſhew that ſuch an one is entred into Religion in ſuch a place, into the Order of Saint *Benet*, and is there a Monke profeſſed, or in the orders of Friers Minors and Preachers, and is there a brother profeſſed, and ſo of other Orders of Religion, &c. and aske iudgement if he ſhall be anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, hee is dead in the Law, and his Sonne or next Couſin incontinent ſhall inherit him, as well as though hee were dead indeed, and when he entreth into Religion, hee may make his Teſtament and his Executours, and they may haue an action of debt due to him before his entry into Religion, or any other action that Executors may haue, as if hee were dead indeed. And if that hee make no Executours when hee entreth into Religion, then the Ordinary may commit the Adminiſtration of his goods to other, as if hee were dead indeed.

(a) It is to bee obſerued that a man doth enter into Religion at his firſt comming, and liueth vnder obedience, but hee is not profeſſed till a yeare bee paſt, or ſome time of probation. And hee is ſaid to bee profeſſed when hee hath taken the habit of Religion, and vowed three things, Obedience, Wilfull Pouertie, & perpetuall Chaſtitie. And therefore our Authour ſaith here enter & profeſſe.

(a) Bract. lib. 5. fo. 419. 421. Britt. ca. 22. fo. 39. Fleta, lib. 6. ca. 41. 5. E. 2. tit. nonabil. 26. 3. H. 6. 24. 1. E. 3. 9. 7. H. 4. 2. Doct. or & Stud. 141. 21. R. 2. iudgement, 263. 11. R. 2. ibid. 107.

¶ *En Lorders des Freres Preachers, ou* (b) *Minors.* It appeareth in our Bookes that of Friers there were foure Orders, viz. Minors, Auguſtins, Preachers and Carmelites, and the Franciſcani, Capuchini, and Obſeruantes are included vnder the title of Minors, and they were called Obſeruants, becauſe they bee not Conuentuall or ioyned together in a Brotherhood, but liue ſeparately, and bound themſelues to obſerue more ſtrictly the rights of their Order. (c) Cum quis ſemel ſe religioni contulerit, renunciat omnibus

(b) 4. H. 4. ca. 17. 23. H. 8. ca. 12.

(c) Bracton fo. 421. b.

quæ ſeculi ſunt, habita diſtinctione, vtrum habitum probationis ſuſceperit, vel habitum profeſſionis.

¶ *Il eſt mort en Ley.* Ciuiliter mortuus, or mortuus ſeculo. (d) There is a death in deed, and there is a ciuill death or a death in Law, Mors ciuilis and mors naturalis, as here it appeareth, and therefore to ouſt all ſcruples, leaſes for life are euer made during the naturall life, &c. If the father enter into Religion, then ſhall his ſonne and heire haue an aſſiſe of Mordanceſter, and the Writ ſhall ſay, (e) Si pater, &c. die quo obiit habitum religionis aſſumpſit, in quo habitu profeſſus fuit vt dicitur.

(d) Bracton, fo. 301. 426. Britton fo. 226. 250. 251. Fleta, lib. 6 ca. 41.

(e) F.N.B. 196. 5. E. 4. 3.

¶ *Auxibien*

¶ *Auxibien come il fuit mort en fait.* But yet to three purposes, profession, that is, the ciuill death, hath not the effect of a naturall death.

First, This ciuill death shall neuer derogate from his owne grant, nor be any meane to auoid it. And therefore if Tenant in Tayle maketh a feoffment in fee, and entreth into Religion, his issue shall haue no Formedon during his life, because that should be in derogation of his owne Grant, and be a meane to auoid the same.

(t) Secondly, It shall neuer giue her auaile, without whose consent he could not haue entred into Religion, and therefore his wife after his ciuill death shall not be indowed, vntill his naturall death. But if the wife, after her husband had entred into Religion, alien the land which is her owne right, and after her husband his deraigned, the husband may enter and auoid the alienation.

(t) 32.E.1. Dower 176. 31.E.3. Collusion 19. 33.E.3. Estate conge 52. 21.E.4.14.

Thirdly, It shall not worke any wrong or preiudice to a stranger that hath a former right, and therefore if the Disseisor entreth into Religion, and is professed, so as the Land descends to his heire, yet this descent shall not tolle the entrie of the Disseisee.

(g) A woman cannot be professed a Nun during the life of her husband: but some doe hold a diuersitie, (h) that ante carnalem copulam, the husband or wife may enter into Religion without any consent, but post carnalem copulam neither of them can without consent of other.

(g) 5.E.4.3.2.

(h) 18.H.6.33.per Fortesc.

(i) But if a man holdeth lands by Knights Seruice, and is professed in Religion, his heire within age, he shall be in ward. (k) If I be disseised, and my brother releaseth with warranty, and is professed in Religion, and the warrantie descendeth vpon me, this warrantie shall binde me, because I am his heire, and such inheritance as my brother had shall descend vpon me.

(i) 31.E.3. Collusion 29.

(k) 34.E.3. Garrantie 71. Vid the Chapter of Warrantie, Sect.

(l) And if one Joyntenant be professed in Religion, the land shall suruiue to the other. If a man or a woman be professed in Religion in Normandy, or in any other forraine part, such a profession shall not disable them to bring any Action in England, because it wanteth triall, but they must bee professed in some house of Religion within this Realme, for that may be tried by the Certificate of the Ordinarie, so as of forraine professions the Common Law taketh no knowledge. (m) And yet in some case one that is professed in Religion within the Realme shall haue an Action, as if he be made an Executor, or if he be an Administrator, he shall maintaine an Action not in his owne right, but in the right of the Dead. (n) If a Monke be made a Bishop, or a Parson, or a Vicar, he shall haue an Action concerning his Bishoprieke, Parsonage, or Vicarage, & sic de similibus.

(l) 21.R.2. Iudgem.263.

(m) 10.E.3.521. 14.E.3. Executors 87. 1.H.7.25. 21.H.6.30. 8.H.6.14.

(n) 41.E.3.9. Nonability 9. 14.H.8.16.

(o) And if a Monke be Farmer of the King, yeelding a rent, he shall haue an Action concerning that Farme. And albeit Littleton speaketh generally of one that is professed in Religion, yet must it not be vnderstood of the Soueraigne or Head of the religious house, as of the Abbot, Prior, or the like, (*) for albeit they be professed in Religion, yet by the policie of the Law, they are persons able to purchase, and to implead, and to be impleaded, to sue, and to be sued for any thing that concernes the house of Religion, for otherwise the house might be preiudiced, and other men also of their lawfull Actions. And this is the ancient Law of England, as it appeareth in these words, (p) Des biens des gents de Religion appent laction al Chiefe en son noisme pur luy & son Couent. But what if a Monke, &c. were beaten, wounded, or imprisoned, &c. Doth the Law giue no remedy therefore? Yes verily, (q) for in that case the Abbot and the Monke shall ioyne in an Action against the wrong doer, and if the Writ be, Ad damnum ipsius Prioris, the Writ is good; and if it bee ad damnum ipsorum, it is good also. Also if a Monke be by conspiracie falsly and maliciously indicted of Felony and Robberie, and afterwards is lawfully acquited, his Soueraigne and he shall ioyne in a Writ of conspiracie and the like. And where Littleton speaketh of a man that is professed in Religion, the same Law is of a Nun, sanctimonialis, mutatis mutandis.

(o) 2.H.4.7.8.H.5.6. 7.E.4.30.44.E.3.4. 20.E.3.Vill.10.& Nonability 9.49.E.3.4.

(*) Bract.fo.415.416.429. Mir.c.2.sect.14.14.H.4. 37.b. 5.H.7.26. Vid. sect. 296. 14.E.4.36.

(p) Mir. vbi supra.

(q) 22.Ass.87. 21.E.3.41. 42. 22.E.3.2.87.H.6.8. 32.H.6.36.Bract.l.5. f.416.429. 13.E.3.Brē. 261.42.E.3.2.38.H.6.7.b. 24.E.3.34.b.45. 7.R.2. Nonabilitie 3.9.

(r) A wife is disabled to sue without her husband, as much as a Monke is without his Soueraigne, and yet we read in bookes, that in some cases a wife hath had abilitie to sue and be sued without her husband: (s) For the wife of Sir Robert Belknap, one of the Justices of the Court of Common Pleas, who was exiled or banished beyond sea, did sue a Writ in her owne name, without her husband, he being aliue; whereof one said, Ecce modo mirum, Quod fœmina fert Breue Regis non nominando virum coniunctim robore Legis.

(r) 4.H.3.Br.766.

(s) 2.H.4.f.7.2.

(t) King Edward the third brought a Quare impedit against the Lady of Maltrauers, and she pleaded that she was Couert of Baron; whereunto it was replyed for the King, that her husband the Lord Maltrauers, was put in exile for a certaine cause, and she was ruled to answer.

(t) 10.E.3.53.

(u) King Henrie the fourth brought a Writ of Ward against Sibel B. who pleaded that she was Couert Baron, &c. whereunto it was replied for the King, that her husband for a crime that he had committed against the King & the Peeres, was relegate or exiled into Gascoigne, there to remaine vntill he obtained the Kings grace: And Gascoigne Chiefe Justice, Ex assensu sociorum, awarded that she should answer.

(u) 1.H.4.1.b.

Sir Tho. Egerton Lord Chancellor, in his argument which he published apart by himselfe in

Coke

Caluins case De Post-Natis, demanded what former President there was for the warrant of the Lady Belknaps case in 2. H. 4. 7. which occasioned me to search, and vpon search I found that the like Iudgement had been giuen before at the Parliament holden in Crast. Epiph. An. 19. Edw. 1. where the case was, That Thomas of Weyland being abiured the Realme for Felony, in the yeare before, Margerie de Mole his wife, and Richard sonne of the said Thomas exhibited their petition of Right into the Parliament, for the Mannor of Sobbir, wherein her husband had but an estate for life ioyntly with her, and the Inheritance in Richard the sonne by Fine. The Earle of Glouceſter, Lord of the Fee, (who claiming the land by Eſcheat, had taken the poſſeſſion thereof) alleaged, Quod non fuit juri conſonum quod aliqua fœmina intraret in aliquas terras viuente marito ſuo, eo quod præfatus Thomas abiurauit Regnum & adhuc viuit, & aſſerit idem Comes nunquam huiuſmodi caſum accidiſſe, & inde petit poſt multas allegationes quod poſſit præfictum manerium tenere vt eſchaetam ſuam. Super quo per ipſum Dominũ regem præceptum fuit, quod tam Iuſtic' ſui de vtroque Banco quam cæteri de Regno ſuo tam milites quã Seruientes in legibus & conſuetudinibus Angliæ experti mandarentur, quod eſſent coram Rege & eius Conſilio, &c. ad certiorandum ipſum Regem qualiter & quomodo in caſu iſto fuerit procedendum, & qualiter temporibus præteritis & anteceſſorũ ſuorum in caſibus conſimilibus fieri conſueuit, & interim ſcrutantur Records de conſimilibus, vbi recitantur duo vel tres conſimiles caſus. Et quia licet prius non videbatur aliquibus juri conſonum fuiſſe quod vxor in vita viri ſecundum ſanctam Eccleſiam, qualitercunque deliquiſſet quoad forum Regium, non poſſet nec deberet à viro ſuo ſeparari, & ſic quicquid foret in poſſeſſione vxoris, conuerteretur in poteſtatem viri ſui, & hoc manifeſte imminueret contra conſuetudinem Regni. Et etiam quia quidam dubitabant quod de poſſeſſionibus & bonis vxoris vir poſſit aliqualiter ſuſtentari. Tamen coram Conſilio Domini Regis vocatis Theſaurar' & Baronibus & Iuſticiariis de vtroque Banco concordatum eſt, quod prædicta Margeria rehabeat talem ſeiſinam, &c. ſecundum purportum finis prædict. &c. Patet etiam conſimile exemplum tempore Henrici patris regis. I haue cited this ſolemne reſolution the more at large, becauſe there be many excellent things to bee obſerued in it: ſo as by that which hath beene ſaid, it plainly appeareth, that this opinion concerning the habilitie of the wife of a man abiured or baniſhed, was not firſt hatched by the Iudges in Henry the fourths time. And here is to be obſerued, that an abiuration, that is, a deportation for euer into a forreine Land, like to a Profeſſion, (whereof our Author ſpeaketh here) is a ciuill death, and that is the reaſon that the wife may bring an Action, or may be impleaded during the naturall life of her husband. And ſo it is, if by Act of Parliament the husband be attainted of Treaſon or Felony, and ſauing his life, is baniſhed for euer, as Belknap, &c. was, this is a ciuill death, and the wife may ſue as a Feme ſole. And hereby you may vnderſtand your Bookes which treat of this matter. But if the husband by Act of Parliament, haue iudgement to be exiled but for a time, which ſome call a Relegation, that is no ciuill death. And in 8. E. 2. an Abiuration is called a diuorce betweene the husband and wife. Sed opus eſt interprete; for by Law no ſubiect can be exiled or baniſhed his Countrey, whereby he ſhall perdere patriam, but by authoritie of Parliament, or in caſe of Abiuration, and that muſt be vpon an ordinarie proceeding of Law, as it was in the caſe of Weyland.

Another example we haue in our bookes to this effect: If the husband had aliened the Land of his wife, and after had committed felony and beene abiured the Realme, the wife ſhall haue a Cui in vita in his life time, agreeable with the ſaid reſolution in Parliament, for that the abiuration was a ciuill death.

See in the Regiſter, a woman was baniſhed out of the Towne of Calice for adulterie, by the Law or cuſtome of that place, and there appeareth Carta pardonationis pro muliere bannita. Sed nos non habemus talem conſuetudinem.

(a) But by the Common Law, the wife of the King of England is an exempt perſon from the King, and is capable of lands or tenements of the gift of the King, as no other Feme couert is, and may ſue and be ſued without the King, for the wiſdome of the Common Law would not haue the King (whoſe continuall care and ſtudy is for the publike, & circa ardua Regni) to be troubled and diſquieted for ſuch priuate and petie cauſes: ſo as the wife of the King of England is of abilitie and capacitie to grant and to take, to ſue and be ſued as a Feme ſole by the Common Law.

(b) And ſuch a Queene hath many prerogatiues, as, ſhe ſhall finde no pledges, for ſuch is her dignitie, as ſhe ſhall not be amerced.

The Queene not the Kings ſonne are reſtrained by the Statute of 1. H. 4. cap. 6. concerning grants by the King.

(c) In a Quare impedit brought by her, ſome ſay that Plenartie is no plea, no more than in the caſe of the King.

(d) If any Bailife of the Queenes bring an action concerning the Hundred, hee ſhall ſay, In contemptum Domini Regis & Reginæ.

Pl. in Parliam. 19. E. 1.

Note the antient triall of difficult matters in Law.

The great authoritie of Iudiciall Records and Preſidents.

A ſolemne reſolution of the Law in this point.

8. E. 2. Coron. 425.

So reſolued in Parliament, vpon the making of the Statute of 35. E 1. c. 1. Exilium Hugonis de Spencer patris & filii tempore E. 2.

31. E. 1. Cui in vita 31.

Regiſt. fol. 312. b.

(a) Vide in my Preface to the ſixth booke, This was Law before the conqueſt.
10. E. 3. 27. b. 308.
30. E. 3. 5.
18. E. 3. 1. 22. E. 3. 21.
49. E. 3. 4. 49. Aſſ. 8.
11. H. 4. 67. 14. Ed. 3. Voucher 110. 20. E. 1. Nona 9.
31. H. 3. Quar. Imp. 146.
3. H. 7. 14. 19. H. 6. 2.
28. H. 6. 13. 7. H. 7. 7. 2.
26 H. 6. Aidle Roy 24.
Flet. li. 2. ca. 63. in Fine.
Pl. Com. 231. Stanf. prer. 10. b.
(b) 18. E. 3. 2. 33. E. 3. briefe 916. F. N. B. 101. 2.
(c) 18. E. 3. 32. 24. E. 3. 35. 75.
(d) 31. E. 3. Brē. 316. 9. E. 3. 33.

The Quéene shall pay no Tolle.

(e) F.N.B.235.A. (e) If the Tenant of the Quéene alien a certaine part of his Tenuetie to one, and another part to another, the Quéene may distraine in any one part for the whole, as the King may doe: but other Lords shall distraine but for the rate, and therefore where the Quéene so distraineth, there lyeth a writ De onerando pro rata portione. (f) The writ of right shall not be directed to the Quéene no more than to the King, but to her Bailife, otherwise is when any other is Lord.

(f) F.N.B.1.F.

(g) 14.E.3.Voucher,110. 21.E.3.53. 22.E.3.3.b. 17.E.3.65. 10.E.3.17. 5.E.3.4. 15.E.3.Aide del Roy 66. 10.E.3.18. 26.H.6. Aide le Roy 24. (h) 21.E.3 13. 34.E.3. Protect.122. 11.H.4.67.b. (i) 30.E.3.5. (k) Lestat. de 25.E 3. de Proditionibus. (l) Rot. Parliam. 3.H.6.nu.7. (m) 4.E.4.25. 6.E.4.4. 45.E.3.10.a. 18.E.4.19. 22.H.6.5. 5.H.7.25.b.

(g) In case of aid prier of the Quéene, it is Domina regina inconsulta, and the cause of the aid prier shall not be counterpleaded no more than in the Kings case. And see where the aid shall be granted of the King and Quéene, and whereof the Quéene onely, and shee of the King. (h) But a Protection shall be allowed against the Quéene, but not against the King: neither shall the Quéene be sued by petition but by a Præcipe. (i) The Quéene is not bound by the Statute of Marlebridge for driuing a Distresse into another Countie.

(k) If any doe compasse the death of the Quéene, and declare it by any ouert fact, the like intent is treason, as in the case of the King. *v. Holbourne upon 25th Edw. 3. Coron. 1.*

(l) No man may marrie the Quéene Dowager without the Kings licence. But let vs now returne to Littleton.

¶ *Il poet faire son testament & ses executors, &c.* (m) If A. be bound to the Abbot of D. A. is professed a Monke in the same Abbie, and after is made Abbot thereof, he shall haue an action of debt against his owne Executors.

(m) 4.E.4.25. 6.E.4.4. 45.E.3.10.a. 18.E.4.19. 22.H.6.5. 5.H.7.25.b.

¶ *Donques lordinarie poet commit administration, &c. sicome il fuit mort en fait.* (n) Note the Statute of 31. E. 3. ca 11. that giueth actions to the Administrators, speaketh of a man that dies intestate, which by the Authoritie of Littleton extendeth as well to a ciuill death as to a naturall.

(n) Pl.Com.280.281. Greisbrookes case.

Sect. 201.

¶ Excommenge, excommunicatus, excommunicatio. (a) Sicut quis poterit habere lepram in corpore, ita & in anima. Excommunicato interdicitur omnis actus legitimus, ita quod agere non potest, nec aliquem conuenire, licet ipse ab aliis possit conueniri.

(a) Bracton, lib.5.fo.415. 426.427. Fleta lib.6.c.44. Britton, ca.49. fol.125.

Excommunicatio est nihil aliud quam censura à Canone vel Iudice Ecclesiastico prolata & inflicta priuans legitima communione Sacramentorum, & quandoque hominum. * It is diuided into the greater and the lesser. Minor est per quam quis à Sacramentorum participatione conscientia vel sententia arceatur. Maior est quæ non solum à Sacramentorum verum etiam fidelium communione excludit, & ab omni actu legitimo separat & diuidit, but either of them both disableth the partie. (b) Cum excommunicato autem nec orare nec loqui nec palam, nec absconditè, nec vesci licet, exceptis quibusdam personis. But euerie Excom-

* F.N.B.64.F. *v. 7. de descriptione iuris Eccles. in 8. parte 3ª*

(b) Bracton, 426.b.acc.

¶ Le vi. est, lou vn home est excommenge per la ley de saint Esglise, & il suist vn action real ou personal, le tenant ou defend̄ poit pleve que celuy que suist est excommenge, & ō ceo conient mẽ lett̄ de Leuesqz south son seale, tesmoignant lexcommengement, & demaundera iudgement sil serra respondue, &c. Mes en cest cas si le Demandant ou Plaintife ceo ne poit dedire, le bẽe nabatera my, mes le iudgement serra, que le Tenant ou Defendant alet̄ quite sans

The vi. is, where a man is excommunicated by the Law of holy Church, & he sueth an action reall or personall, the tenant or defendant may plead that hee that sueth is excommunicated, & of this it behoues him to shew the Bishops letters vnder his seale, witnessing the excommunication, and aske iudgement if he shall be answered, &c. but in this case if the demandant or plaintife cannot deny it, the writ shall not abate, but the iudgemẽt shal be, that the tenant or defendãt shall go quite without

iour,

iour. pur ceo q̄ quant le Demandant ou plaintife ad purchase les letters de absolution, & ceux sont monstres a le Court, il poit aū vn resommons, ou reattachment sur son original, solonque la nature de son brē. Mes en les autres v. cases le brē abatera, &c. si le matter mēe ne poit estre dedit.

day, for this, that when the Demandant or Plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a resummōs or a reattachment vpō his originall, after the nature of his writ, &c. But in the other cases the writ shall abate, &c. if the matter shewed may not bee gainesaid.

munication disableth not the partie. (c) If Baliffes and Commons or any other Corporation aggregate of many bring an Action, Excommengement in the Baliffes shall not disable them, for that they sue and answer by Attorney, otherwise it is of a sole Corporation. But if Executors or Administrators be excommunicated, they may bee disabled, because they which conuerse with a person excommunicate are excōmunicate also. (d) If a Bishop be defendant an excommunication by the same Bishop against the Plaintife shal not disable him, and it shall be intended for the same cause, if another be not shewed.

(c) 20.H.3.15. 42.E.3.13. 21.H.6.30, 21.E.4.47.
(Excommengment in bar of plt in an Action shall be held a void plea 23.H.8.ca.3.

(d) See Artic. Cleri. ca.7. 5.E.3.d. 8 E.3.7c. 9.H.7.21, 10.H.7.8.& 9. 18.E.3.58. 28.E.3.97. 16.E.3. Excom.5. 20 E.3 ibid.9. 3.H.4.3.

¶ *Letter del Eueſque de south ſon ſeale.* (e) None can certifie excommengement but onely the Bishop, vnlesse the Bishop be beyond sea or in remotis, or one that hath ordinarie iurisdiction, and is immediate Officer to the Kings Courts. As the Archdeacon of Richm. or the Deane and Chapter in time of vacation. (f) But in ancient time euerie Officiall or Commissarie might testifie Excommengement in the Kings Court, and for the mischiefe that ensued thereupon it was ordained by Parliament, that none should testifie Excommengement but the Bishop only.

(e) Bracton, li.5.fo.426.b. 12.E.4.15. 20.H.6.17. 20.E.3. Excommengement 20. 33.H.3. ibid.29. 44 E.3. ibid.23. 11.H.4.14. F.N.B.64.65.238. 7.E.4.14. 8.H.6.3. Regist.67.
(f) 11.H.4.62. in Debt.

(g) If a Bishop certifie, that another Bishop hath certified him that the partie which is his Diocesan is excommunicated, this Certificate vpon anothers report is not sufficient. (h) If the Bishop of Rome, or any other hauing forraine Authoritie doth excommunicate any subiect of this Realme, and certifieth so much vnder his seale of lead, this shall not disable the partie: For the Common Law disallowes all Acts done in disabilitie of any subiect of this Realme by any forraine power out of the Realme, as things not authentique whereof the Iudges should giue allowance. (i) If the Bishop certifieth the Excommunication vnder seale, albeit he dyeth, yet the Certificate shall serue. (k) Si quis innodatus fuerit per excommunicationes diuersas pro diuersis delictis, & profert literas absolutionis de vna sententia, non erit absolutus quousque de omnibus aliis absoluatur.

(g) 33.E.3. Excom.29. F.N.B.65.
(h) 16.E.3 Excom.4. 31.E.3.ibid.4.& 6. 30.Ass.19. F.N.B.64. 4 H.7.15. 12 E.4.15. 14.H.4.14.
(i) 14.E.3. Excom.8. 3 E.2.ibid.26.
(k) Hil. 14.E.3. Coram rege, London in Thesaur.

¶ *Eueſque.* Episcopus, a Bishop is regularly the Kings immediate officer to ỹ Kings Court of Iustice in causes Ecclesiasticall. And all the Bishoprickes in England are of the Kings foundation, and the King is Patron of them all, (l) and at the first they were donatiue, and so it appeares by our Bookes, and by Acts of Parliament, and by Historie, and that was Per traditionem annuli & pastoralis baculi, i. the Crosier. And King Henry the first being perswaded by the Bishop of Rome to make them electiue by their Chapter or Conuent, refused it. (m) But King Iohn by his Charter acknowledging the custome and right of the Crowne in former times, yet granted De communi consensu Baronum, that they should bee eligible, which after was confirmed by diuers Acts of Parliament. And afterward the manner and order as well of election of Archbishops and Bishops, as of the Confirmation of the election, and Consecration is (n) enacted and expressed in the Statute of 25. H. 8. But by the Statutes of 31. H. 8. and 1. E. 6. they were made donatiue by the Kings Letters Patents, both which Statutes are repealed, and the Statute of 25. H. 8. doth yet remaine in full force and effect.

(l) 17.E.3.fo.40. 5.E.3. cap. de prouiss. 25.H.8. ca.19.lib.3.fo.73. le case de Deane & Chapter de Norwich. Mat.Par pag. 62. Vid.sect.133.134.
(m) Ror.Patens. 15. Ianuary 17 Regis Iohannis. Mat.Par.pag. 252.35.E.1. Lestat. de Carlisle. 25 E.3. Lestatute de prouiss. 13.R.2.ca.2.
(n) 25.H.1.ca.22.

And where Littleton saith, that the Bishop vnder his seale must testifie, &c. it is to bee knowne (o) that none but the Kings Courts of Record, as the Court of Common Pleas, the Kings Bench, Iustices of Gaole deliuerie, and the like, can write to the Bishop to certifie bastardy, mulierte, iopaltie of matrimony, and the like Ecclesiasticall matter: for it is a rule in Law, That none but the King can write to the Bishop to certifie, and therefore no inferiour Court, as London, Norwich, Yorke, or any other Incorporation can write to the Bishop, but (p) in those cases the plea must be remoued into the Court of Common Pleas, and that Court must write to the Bishop, and then remand the Record againe. And this was done in respect of the honor and reuerence which the Law gaue to the Bishop being an Ecclesiasticall Iudge

(o) 2.E.3. Corone, 160. 8.E.3.59. 24.E.3.33. 44.E.3.28. 8.R.2. Consuans, 88.
(p) 41.E.3. 42.E.3. fo.6. 18 E.3.61. 14.H.4.25. 3.H.4.12. Regist.7.a. F.N.B.6 E.

and a Lord of Parliament, by reason of the Barony which euerie Bishop hath. And this was the reason (a) a Quare impedit did lye of a Church in Wales in the Countie next adioyning, for that the Lordships Marchers could not write to the Bishop, (b) neither shall conusance be granted in a Quare impedit, because the inferiour Court cannot write to the Bishop. And herewith agreeth Antiquitie. (c) Nullus alius præter regem potest episcopo demandare inquisitionem faciendam. (d) And another speaking of loyaltie of marriage, Nec alius quàm rex super hoc demandaret episcopo, quod is de inquireret: episcopus alterius mandatum quam regis non tenetur obtemperare; and therewith agreeth Britton also.

(a) 8 E.3.59. 36.H.6.33. tit. Quar. Imp. Brooke 109 35.H.6.30. 11.H.6 3. 24.E.333.
(b) 15.E.3. Conusans 41. Iurisdict. 24. 40.E.3.2. vide sect. 134.
(c) Bract. lib 3. 106.
(d) Fleta lib. 5 cap. 24. Britton fol. 248.b.

¶ *Le Briefe nabatera, &c.* Abater is a French word, and signifieth Destruere, or Prostruere, to destroy or prostrate. And Abatement de briefe is a Prostration or ouerthrowing of the writ.

¶ * *Alera quite sauns iour, &c.* That is, to goe quiet without any continuance to any certaine day, and therefore the Defendant is not bound to any certaine attendance, vntill the partie purchaseth his Letters of absolution, and the reattachment or resummons bee sued, the entrie of which award is, Ideo loquela prædicta remaneat sine die quousque, &c.

(*) Bract. lib. 5. fol. 425. 11.R.2.Excom.25. 13.E.4.8. 3.Ass.p.12.

Vide sect. 691.

¶ *Iour.* Dies (e) in legall vnderstanding is the day of appearance of the parties, or continuance of the plea. And you shall vnderstand that first in reall actions there are Dies communes, common dayes, whereof you shall read in diuers ancient Statutes.

(e) 51.H.3.cap.1.& 2. Marleb. ca.12. 32.H.8. ca.21.

(f) Also in all Summons vpon the originall there must be fiftæne dayes after the Summons before the appearance. (g) But if the originall be returned tarde, and Summons alias goeth forth, there must be nine Returnes betweene the Teste and the returne. And so in other inferiour reall processe in reall actions, sauing if Conusans be demanded to be holden within his manor, there processe shall be awarded from three weekes to three weekes.

(f) Articul. super Cart. ca.15.28.E.1.
(g) 8.H.6.20. 30 H.6.35. 8.Eliz.Dier.252.

And before the Statute of Articuli super cartas, in all Summons and Attachments in plea of Land there shall bee contained the tearme of fiftæne dayes. (q) And it appeareth as well by the Statute, as by the ancient Authors of the Law, who wrote before the Statute, that this was the ancient Common Law: and the reason of these long dayes giuen in reall Actions, was (the recouerie being so dangerous) that the Tenant might the better prouide him both of answer and of prowes, (*) but by consent they may take other than common dayes.

(q) Mirror cap.2.sect.19. Bract.lib.5.fol.334.& lib. 4.fol.245.Brit.fol.279.b. Fleta lib.6.cap.6. 12.E.401.

(*) 11.H.6.23. 15.E.3. iour.22. 21.E.3.29. 15.Ass. Britton fol.10.b.

And it is not amisse to note what the ancient Law was in proceeding against a man for his life. And therefore heare what Britton saith, Sur ie presentment de cest felony (vnder which he includeth also Treason) voilons nous (for he wrote in the Kings name) que trestous ceux que ent ser' endites, face le Viscont hastiment prender, & sauement lour corps en prison garder & que ilz sont mienes deuant nous, ou deuant nous Iustices: & pur ceo que nulluy ne soit disgarnis de lour respons, voilons que ceux que issint soient prise que ilz eyent temps de pur ueyer lour respons 15. iours au meyns silz le prient, & en dementiers soient sauement gardes: (r) Vide Fortescue of this matter. And see the Mirror that in some cases the partie conuicted had fortie dayes, or at least thirtie dayes to shew some matter to disturbe (that is, to arrest) Judgement which now I know is gone in desuetudinem, and great expedition is now made in pleas of the Crowne concerning the life of man. Sed de morte hominis nulla est cunctatio longa.

(r) Fortescue in libro de laudibus legum Angliæ. Mirror.ca.4. sect. Sept. choses disturbent indgement mortels.

(f) And the vse of the Kings Bench at this day is, that if the offence be committed in another Countie than where the Bench sits, and the Inditement be removed by Certiorari, there must be fiftæne dayes betweene euerie processe and the returne thereof, but if it be committed in the same Countie where the Bench sit they may proceed de die in diem, but so they will doe rarely: but let vs returne againe to the Common Pleas.

(f) Lib.9.118.b. Zanchers case.

Secondly, there is a day called Dies specialis, (a) as in an Assise in the Kings Bench or Common Pleas, the Attachment need not be 15. dayes before the appearance. Otherwise it is before Justices assigned, but generally in Assises, the Judges may giue a speciall day at their pleasure, and are not bound to the common dayes, (*) and these dayes they may giue as well out of terme as within. So vpon an imparlance the Court may giue any speciall or particular day, but that must be in the terme time, and likewise in a Scire facias, vpon a fine or a recouerie in a reall action, because it is a writ of Execution, and soit is in a Per que seruitia and the like, and in all iudiciall Writs, in processe against an Infant to iudge of his age, or where the husband prayeth in aid of his wife, or in a Pone at the suit of the Defendant, there need not be fiftæne dayes. And after Demurrer in Law, the Court may giue what day they will. (b) And it is worthy the noting, that if in an Assise the parties be adiourned to Westm. vsque 15. Pasche, there they be not demandable till the fourth day, but if it be adiourned vsque diem Lunæ, or diem Martis, there the parties are demandable on that day.

(a) Artic.super cart.vbi supra. F.N.B. 177. c.11. Ass.30.12.Ass.4.22.Ass.79. 3.H.6.Ass.2. 9.E.4.5.a. 27.E.3.1.2.W.1.cap.vlt.
(*) F.N.B 177 D.7.Ass.7. 14.Ass.4 24.E.3.31. 39.E.3.20. 9 E.4.18. 12.E.4.15.8.H.5.Errō.87.

12.E.4.15.

(b) 41.E.3 iour.16.8.E.4. 4.1.H.6.4. 27.Ass.33.

Thirdly, (c) There is a day of grace, dies gratiæ, or a day of courtesie, the name doth shew of what kinde it is, and regularly this day is granted by the Court, at the prayer of the Demandant

(c) 3.E.2. auowrie 188. 15.E.3.iour.26.22.E.3. 20.1.E.3.4.lib.9.fol.49. Countee de Salops case. 33.H.6.42.

mandant or Plaintife in whose delay it is, and neuer at the prayer of Tenant or Defendant; But it is worthy of obseruation (d) that a day of grace is neuer granted where the King is partie by Aide prayer of the Tenant or Defendant, nor where any Lord of Parliament or Peere of the Realme is Tenant or Defendant. (e) And sometime the day that is 4. die post is called dies gratiæ, for the verie day of returne is the day in Law, and to that day the Iudgement hath relation, but no default shall be recorded till the fourth day be past, vnlesse it be in a Writ of right, where the Law alloweth no day, but onely the day of returne. This day is sometime called dies amoris, and sometime a dies datus, but it were too long to enumerate all. This shall be sufficient to giue the Reader a taste to vnderstand the residue concerning this matter.

(d) 14.E.3.iour.24 15 E.3. ibid.21. 22.E.3.9. 27.E.3.88.

(e) 32.E.4.iour.39. 18.E.3. ibid. 20.38.E.3.20 9 Ass. 41. 21.E.3.13. 41.E 3.ib. 16.33.H.6.32. 34.H.6.27. 10.Eliz.Dier 269. 49 H.6. 29.24.E.3.28. 24 E.3 breue 556. Bract lib.5.fol. 367.

(f) There is also a day of appearance in Court by the Writ, and by the Roll: by writ when the Sheriffe returnes the Writ. By the Roll, when he hath a day by the Roll, and the Sheriffe returne not the Writ, there the Defendant to saue himselfe from corporall paine as by imprisonment, or to preuent the losse of issues, or to saue his freehold or inheritance may appeare by the day he hath by the Roll

(f) 21.E.3.43. 3.H.6 2.2. 22.H.6.20. 3.E.4.15. 6.E. 4.7.E.4 15 8.E.4.18.21.H. 7.8. 10.H.7 11.b.27 H.8. 14.Lib.1140 17.E.3.2. 11.Eliz.Dier 286.

(g) Note, it is said commonly that the day of Nisi prius, and the day in banke is all one day, that is to be vnderstood as to pleading, but not to other purposes.

(g) 27.H.6.10.30. 4.H.6.9. 40.E.3.31.

There are dies iuridici (which (h) Britton calleth temps conenables) and dies non juridici: dies juridici (except it be in Assises) are onely in the tearme. (i) And there be also in the tearme dies non juridici. As in all the foure termes the Sabbath day is not dies juridicus, for that ought to be consecrated to Diuine Seruice. Also in Michaelmasse Tearme the Feasts of All Saints and of All Soules: in Hillarie Tearme, the Purification of the blessed Virgin Marie; and in Easter Tearme the Feast of the Ascension are not dies juridici, but set apart by the ancient Iudges and Sages of the Law for Diuine Seruice. For Trinitie Tearme (which sometime had seuen dayes of returne, and was as long as Michaelmasse Tearme is now: but for anoiding of infection in that hot time of the yeare, and that men might not be letted to gather in Harueſt, three returnes (since Littleton wrote) viz. Crastino Sancti Iohannis Baptistæ, Octabis Sancti Iohannis Baptistæ, and 15. Sancti Iohannis Baptistæ, are by the Statute of 32. H. 8. cut off & become dies non juridici) And in those daies the Feast of Saint Iohn the Baptist was not dies juridicus. And the said Statute called, Dies Communis in Banco, is in diuers points (since Littleton wrote) altered, as by the said Statute appeareth. And in ancient time respect and reuerence was had by Law to certaine times, as it appeareth (k) by the Statute of W.1. cap.5. which hath a short but an excellent preamble: viz. Et pur ceo que grand charitie serra de faire droit a touts in cest temps, ou mestier serroit: purueu est per assentment des prelates, que Assises de nouel disseisin, mortdancester, & darreine presentment fuissent prises en le aduent en Septuagesime, & en Quaresme, auxibien come (le home) prent lenquestes, & ceo pria le Roy, as Eueſques.

(h) Britton, fol. 134 a.

(i) Mirror, cap. 3 sect. exception de temps & cap. 3 sect. 1.

32.H.8.cap.21.

(k) W.1.cap.vltimo.

(l) This Statute is expounded in Bookes, which I haue onely added, to the end the studious Reader might vnderstand the Bookes that darkly spake of this matter, and be ignorant of nothing that belongs to the vnderstanding of any part of the Law. Now Aduent is a moneth before the Feast of the Natiuitie of our Sauiour Christ, so called, De aduentu Domini in carne. Septuagesima beginneth euer on the Sabbath Day, and is the third Sabbath before Shroue sunday, so called, because it is the 70. day before the Feast of Easter. Sexagesima is the second Sabbath before Shroue sunday, so named, because it is the 60. day before Easter, and so of Quinquagesima, and Quadragesima, (m) whereof you shall read in Acts of Parliament, and ancient Authors. Now as there be dies juridici, so there bee horæ conuenientes, whereof the Mirror saith, (n) Abusion que len tient pleas per dimenches (id est, Sabbaths) ou per auters jours defendus, ou deuant le soliel leuy, ou nocturne, ou en dishoneſt lieu.

(l) 7. Ass.p.7. 14.Ass.5. F.N.B. 177.&c. Britton, fol.134.b.

(m) W.1.cap.51.fait anno 3.E.1. Britton, fol. 134. cap 53.

(n) Mirror.lib.5. sect.1.

(o) Furthermore, there are (as ancient Authors terme them) Dies solaris & dies lunaris secundum quod Deus diuisit lumen à tenebris, ex quibus duobus diebus efficitur vnus dies qui dicitur artificialis ex die præcedente & nocte subsequente qui constat ex 24. horis.

(o) Bract.lib.4.fol.264. Britton, fol.209.

But we at this day retaining the same method doe differ in words. For we say, Dierum alii sunt naturales, alii artificiales, dies naturalis constat ex 24. horis, & continet diem Solarem & noctem. and therefore in Indictements of Burglarie, and the like, we say, in nocte eiusdem diei Iste dies naturalis est spatium in quo Sol progreditur ab Oriente in Occidentem, & ab Occidente iterum in Orientem. Dies artificialis siue Solaris incipit in ortu Solis, & desinit in occasu: and of this day the Law of England takes hold in many cases. Now diuers Nations begin the day at diuers times. The Iewes, the Chaldeans and Babylonians begin the day at the rising of the Sunne, the Athenians at the fall, the Vmbri in Italy begin at midday, the Ægyptians and Romans from midnight, and so doth the Law of England in many cases. Of all which you shall read plentifull matter in our Bookes, and in my Reports, which by this short instruction you shall the better vnderstand.

Gen.cap.1.verse 4.5.

(p) There is also Annus minor and maior. The lesser yeare consisteth of 365. dayes, and six houres, whereby in euerie fourth yeare there is dies excrescens, which makes that yeare to

(p) Bract lib.5.fol.369. Britton, fol.209.a.

(q) 17. Eliz. Dier 345.

(r) 21 H. 3. stat. de anno bissextili.

(s) Lib. 6. fo. 62. Cates-byes case.

haue in rei veritate 366. dayes, and that is called annus maior. (q) A quarter of a yeare containeth by legall computation 91. dayes, and halfe a yeare containeth 182. dayes, for the odde houres in legall computation are reiected, and by (r) the Statute de anno bissextili, it is prouided, Quod computentur dies ille excrescens & dies proxime præcedens pro vnico die, so as in computation that day excrescent is not accounted. A month, mensis, is regularly accounted in Law 28. dayes, and not according to the Solar month, nor according to the Kalendar (s) vnlesse it be for the account of the laps in a Quare impedit. There is mensis Solaris, and mensis Lunaris. Solaris est 12. pars anni, viz. spatium 30. dierum, horarum 10. & minutorum 30. & Lunaris est spatium 28. dierum.

(r) Bract. lib. 5. fol. 425. Britton, ca. 74. lib. 7. fo. 29. 30.

¶ *Resommons ou re-attachement.* These are Writs that the Demandant or Plaintife after he hath obtained his Letters of absolution may sue out to bring the Tenant or Defendant againe into Court to haue day, to make answer vnto him. (t) And these Writs doe lye in all cases when the plea is discontinued or put without day either in this case or in case when the Demandant or Tenant hath his age, or for the non venue of the Iustices, or in case of a Protection or Essoine de seruice le Roy, &c. Of these Writs there be two sorts, viz. generall and speciall, whereof you may see presidents, and read more at large in the case of discontinuance of Processe in my Reports, and need not here to be inserted.

But in the case of outlawry the writ shall abate if he obtaine not his pardon. 44. E. 3. 27.

¶ *Sur son originall.* This is intended of his originall Writs, or of that which is in stead of an originall Writ. But note that in the other fiue cases the Writ shall abate, and in the case of Excommengement the Writ shall not abate, but the plea to bee put without day vntill the Plaintife purchase his Letters of absolution, and sue out his resummons, or re-attachment.

(t) Bract. lib. 5. fol. 428.

In ancient times more persons seemed to be disabled than these six recited by Littleton. As first he that was a Leper, and by the Writ De leproso amouendo was propter contagionem morbi prædicti (as the Writ saith) & propter corporis deformitatem (as others say) to be remoued from the societie of men to some solitarie place, and thereupon (u) it is said, Datur etiam exceptio tenenti, ex persona petentis peremptoria propter morbum petentis incurabilem & corporis deformitatem, vt si petens leprosus fuerit, & tam deformis quod aspectus eius sustineri non possit, & ita quod à communione gentium sit separatus, talis quidem placitare non potest, nec hæreditatem petere. (x) And herewith Britton agreeth treating of disabled men, as men outlawed, abiured the Realme, attainted of Felony, &c. addeth, ne mesel, ouste de common gents.

(u) Bract. lib. 5. fol. 428.

(x) Britton fol. 39. & 88.

(y) Fleta lib. 6. cap. 39. 22. E. 3. in dors. claus. 20. part. m. 14. F. N. B. 234. Register.

(y) And Fleta saith, Competit etiam ei exceptio propter lepram manifestam, vt si petens leprosus fuerit & tam deformis quod à communione gentium merito debet separari, talis enim morbus petentem repellit ab agendo.

And if these ancient Writers be vnderstood of an appearance in person, I thinke their opinions are good Law, for they ought not to sue nor defend in proper person, but by Attorney, for they are separated à communione gentium propter contagionem morbi & deformitatem corporis.

(a) Cambden in Leicestershire, verbo Burton.

Before the Conquest this disease was not knowne in England, For Master Camden writing of Burton Lazers in Leicestershire, saith, (a) Primis Normannorum temporibus collecta per Angliam stipe nosocomium hoc constructum ferunt, quo tempore lepra (quæ à nonnullis Elephantiasis) grauissime vi contagionis per Angliam serpsit. And it is called Morbus Elephantiasis, because the skinnes of Lepers are like to Elephants. (b) And the Law of England for the remouing of the Lepers from the societie of men to some solitarie place, is grounded vpon Gods Law.

(b) Leuit. cap. 13 vers. 44. 45. 46. Numer. cap. 5. verse 1. 2 4. Regum c. 15.

(c) Bract. l. 5. 420. 421. Britton fol. 32. Fleta lib. 6. cap. 39.

(c) Also there was a time when Ideots, Madmen, and such as were deafe, and dumb naturally were disabled to sue, because they wanted reason and vnderstanding, (tales enim non multum distant à brutis) but at this day they all may sue, for the suit must be in their name, but it shall be followed by others. (d) And note, that when an Ideot doth sue or defend, he shall not appeare by Gardian or Prochein Amy, or Attorney, but he must bee euer in person: (e) but an Infant or a Minor shall sue by Prochein Amy and defend by Gardian: but now let vs heare what Littleton will say vnto vs.

W. 3. H. III. 6.

(d) 33. H. 6. 18. F. N. B. 27. G.

(e) 27. H. 8. 11. 40. E. 3. 16. 20. E. 4. 2. F. N. B. 27. H.

Sect. 202.

(z) Mirror cap. 2. sect. 18. Doct. & Stud. fol. 141. 4. E. 4. 25. per Danby. 27. Ass. pl. 49.

¶ *Chapleine* (a) *seculer*, Is he that is In tra sacros ordines, but he is not regular, (that is) liueth not vnder certaine Rules,

¶ Item si vn villein est fait vn chapleine seculer, vncore son seignior poit luy

Also if a Villeine be made a secular Chaplaine, yet his Lord may seise him as his seiser

ſeiſer cõe ſon villeine, & ſeiſie les biens, &c. Mes il ſemble que ſi le villein enter en Religion, & eſt profeſſe, que le Sñr ne poit luy prender ne ſeiſer, pur ceo que il eſt mort en Ley, nient plus q̃ ſi vn frank hõe prent vn niefe a ſa feme, le Seignior ne poit prender ne ſeiſer la feme de le baron. Mes ſon remedy eſt dauer vn action enuers le baron, pur ceo que il prift ſa niefe a feme ſans ſon licence & volunt, &c. Et iſſint poit le Sñr auer action enuers le ſouereign del meaſon qui prift & admittaſt ſon villein deſtre profeſſe en meſme le meaſon ſans licence & la volunt le Seignior, & recouera ſes damages a la value de le villein. Car celuy qui eſt profeſſe Moigne ſerra vn Moigne, & come vn Moign ſerra pris pur terme de ſa vie natural, ſinon que il ſoit deraigne per la ley de ſaint Egliſe. Et il eſt tenus per ſon Religion de garder ſon cloiſter, &c. Et ſi le Sñr luy puiſſoit prender hors de ſa meaſon, donques his villeine, and ſeiſe his goods, &c. But it ſeemeth that if the villein enter into Religion, & is profeſſed, that the lord may not take nor ſeiſe him, becauſe hee is dead in Law, no more than if a free man taketh a neiſe to his wife, the Lord cannot take nor ſeiſe the wife of the husband, but his remedy is to haue an action againſt the husband, for that he tooke his neiſe to wife without his licence and will, &c. And ſo may the Lord haue an action againſt the ſoueraign of the houſe which takes and admitteth his villeine to be profeſſed in the ſame houſe, without the licence & leaue of the Lord, and he ſhall recouer his damages to the value of the villeine. For he which is profeſſed a Monke ſhall be a Monke, & as a Monk ſhall be taken for terme of his naturall life, vnleſſe he be deraigned by the law of holy Church. And hee is bound by his Religion to keepe his Cloyſter, &c. And if the Lord might take him out of his houſe,

nor hath vowed thoſe three things aboue ſpecified. † 132. a'.

(b) Britton, cap. 31. fo. 79. Doctor & Student. c. 141.

(b) *Enter en religion & eſt profeſſe.* That is intended (as hath beene ſaid) when he is regular and profeſt vnder certaine rules, as to become one of the foure orders of Friers (that is to ſay) Freres minors, Auguſtines, Preachers, or Carmelites, or become a Monke, Cannon or Nunne, &c. Qui ad viuendum regulariter ſe aſtringunt, ſiue ſunt Monachi, ſiue Canonici regulares, ſiue ſanctimoniales. For all theſe are regular and Votaries, and are dead perſons in law, but ſo are not the ſecular perſons, as Prebends, Parſons, Vicars, &c. 4. H. 4. cap. 14.

And therefore it is holden in our Bookes, (c) that if a ſecular Prieſt taketh a wife and hath iſſue and dyeth, the iſſue is lawfull and ſhall inherit as heire to his Father, &c. for (as it was then holden) the mariage was not void, but voidable by divorce, and after the death of either partie no divorce can be had. (c) 21. H. 7. 39. 19. H. 7. tit. baſtardy. 33. 5. E. 2. tit. Nonability. 26. 47. E. 3. Caſu vlt.

But if a man marrieth a Nunne, or a Monke marrieth, theſe mariages were holden void, and the iſſues baſtards, becauſe (as it was then holden) the marriage was vtterly voyd; for that the Nunne and the Monke (as Littleton here ſaith) were dead perſons in Law. And that is the reaſon yelded by Littleton, wherefore a villeine being profeſſed in religion cannot be ſeiſed by the Lord, becauſe hee is dead in Law, and yet his bloud or bondage is not thereby altered, but his perſon in reſpect of his profeſſion only priuileged. (d) In decretalibus ſtatutum eſt quod nullus Epiſcopus ſpurios aut ſeruos donec à dominis ſuis fuerint manumiſſi ad ſacros ordines promouere præſumat. But notwithſtanding his perſon is priuileged till hee bee diſgraded. And ſo it is holden in (d) Glanuil. lib. 5. cap. 5. Britton fo. 79. & 82.

(e) Fleta, lib. 1. cap. 44. Britton, vbi supra.

our olde bookes. (e) If a villeine be made a Knight, for the honour of his degree his person is priuileged, and the lord cannot seize him vntill he be disgraded. Nullam vilem personam natione spurium, vel seruilis conditionis ad militiæ strenuitatis ordinem promoueri licebit, sed cum à Dominis suis petantur vt natiui, ipsi primo degradatis, statim ad judicium procedatur.

il ne viueroit cõe vn mort person, ne solongz son Religion, le quel serroit inconuenient, &c.

then hee should not liue as a dead person, nor according to his religion, which should be inconuenient, &c.

(f) F.N.B. 8 b. 32. E. 1. tit. Villen. 45. 33. E. 3. Ibid. 21. 18. E. 2. ibid. 30. 46. E. 3. 6. 4. E. 4. 25. 1. H. 4. 6. 13. E. 1. Villen. 36. 18. Ass. 10. Doct. & Stud. 141. Mirror, ca. 2. sect. 18. acc.

¶ *Si vn franke home prent vn niefe.* (f) Some haue holden that by this marriage the wife shall be free for euer, but the better opinion of our Bookes is that she shall be priuileged during the coverture onely, vnlesse the Lord himselfe marrieth his Niefe, and then some hold, that she shall be free for euer.

(g) 16. H. 3. nuper obiit 17. 8. H. 3. breue 789.

If a Niefe be regardant to a Mannor, and she taketh a freeman to husband by licence of the Lord, and the Lord maketh a feoffment in fee of the Mannor, the husband dieth, the Feoffee shall not haue the Niefe but the Feoffor, for that during the marriage she was seuered from the Mannor. And so is the Booke 29 Ass. (which is falsly printed) to be vnderstood.

(g) If two Coparceners be of a Villeine, and one of them taketh him to husband, she and her husband shall not haue a Nuper obiit against her Copercener, but after the decease of her husband she shall.

(h) Vide Britton, fol. 82. Fortesc. c. 43. 46. E. 3. 6. a.

¶ (h) *Mes son remedie est daver vn action vers le Baron, &c.* Albeit marriage is lawfull, yet when it worketh a preiudice to a third person, an action in this Case lyeth against the husband to the value of his losse. And albeit he did not know her to be a Niefe, yet the action lyeth against him, for hee must take notice thereof at his perill (i) vnlesse she be out of the seruice of the Lord and vagarant, and then if one not knowing her to be a Niefe marrieth her, some say that in that case no action lyeth against the husband. (k) And likewise the Lord shall haue an action against those that were the meanes to make the Villeine a Knight.

(i) 7. E. 2. tit. barre 140.

(k) Britton, fol 82. b.

31. H. 6. ca. 5. 12. H. 7. c. 7. 21. H. 4. 5 b.

¶ *Souereigne*, Præcipuus, Chiefe, as here, Souereigne del meason is the Chiefe of the house.

31 H. 8. cap. 29.

¶ *Si non que il soit deraigne.* This word (deraigne) commeth of the French word derayer, or deraigner, that is to say, to displace or to turne one out of his order, and hereof commeth deraignment a displacing, or turning out of his order. So when a Monke is deraigned, he is degraded and turned out of his Order of Religion, and become a Lay man.

40. Ass. 27. per Finchden.

¶ *Le quel serra inconuenient.* Ab inconuenienti is a good argument in Law, as Littleton often obserueth. And here Littleton concludeth that the Lord cannot take a Monke out of his house, for that it should be inconuenient, which Littleton here sheweth, for diuers reasons, and therefore vnlawfull. And the inconuenience is, that where a man of Religion should liue according to his profession in Religion, by the taking of him out he should not.

¶ *Si le Seignior luy puissoit prender, &c.* By this it appeareth, that if a man detaineth a Villaine in his house, the Lord of the Villaine may take him out of the house, for here the impediment wherefore the Lord could not take him out of the house, was for that the Villaine was a Monke professed. And so in case of the Wardship here next following.

Sect. 203.

¶ *Briefe de rauishment de garde.* This Writ is giuen by the Statute of W. 2. cap. 35. in verbis conceptis, the words of which Writ be that the defendant, Talem hæredem cuius maritagium ad ipsum A.

¶ EN mesme le maner est, si soit gardeine en chiualrie de corps & de fee dun enfant deins age, si lenfant quant

¶ IN the same manner it is, if there bee a Gardian in Chiualrie of the body & land of an infant within age, if the infant

si

ſi bient al age de 14. ans entra en Religion, & eſt profeſſe, le gardein nad auter remedy (quant a le garde de le corps) forſque breue de rauiſhment de garde enuers le ſoueraigne de le meaſon. Et ſi aſcun eſteant de plein age, que eſt coſin & heire del enfant enter en le terre, le gardein nad aſcun remedie quant al garde de la terre, pur ceo que lentrie del heire lenfant eſt congeable en tiel caſe.

when he comes to the age of 14. yeares entreth into religion, and is profeſt, the gardian hath no other remedy (as to the wardſhip of the body) but a Writ of rauiſhment *de gard* againſt the ſoueraigne of the houſe. And if any being of full age who is coſin and heire of the infant entreth into the land, the gardian hath no remedy as to the wardſhip of the land, for that the entry of the heire of the infant is lawfull in ſuch caſe.

perrinet, &c. rapuit & abduxit, &c. contra pacem. Now Rapere ſignifieth properly to take away by violence and force. And when the Soueraigne tooke and admitted the Ward into his houſe to be profeſſed, this in iudgement of Law is a Rauiſhment of the Ward, & as it appeareth in our bookes before the ſaid Statute, there lay a generall action of treſpaſſe in that caſe. Lib 9. Doctor Huſſeys caſe. fol. 72.

¶ *Apres lage de 14. ans, &c.* Our Author mentioneth this age, becauſe it is prohibited by the ſtatute of 4. H. 4. that no childe ſhall be receiued into any houſe of religion before that age without conſent of his parents and gardians, &c. 4. H. 4. cap. 27.

¶ *Le gardein nad aſcun remedie, &c.* Here it appeareth that by the profeſſion of the Ward, the Lord loſeth the Wardſhip of the land, becauſe he is Ciuiliter mortuus, a dead man in Law, and cannot hold any inheritance, neither can the gardian continue the wardſhip of the land, becauſe by the ciuill death of the ward the inheritance is deſcended to another, who is either to be in ward, or pay releefe. So as in this caſe the gardian hath Damnum, but it is abſque iniuria, becauſe he loſeth the Wardſhip of the land by act of Law, viz. the deſcent thereof to another, and therefore the Law giueth to him no remedy in this caſe, neither by any formed Writ, nor by Action vpon his caſe, for Littletons words are generall, (he hath not any remedy.)

Sect. 204.

¶ ITem, en mults diuers caſes le Sñr port faire manumiſſion & enfranchiſement a ſon Villeine. Manumiſſion eſt properment, quãt le Sñr fait vn fait a ſon villein de luy enfranchiſer, Per hoc verbũ (Manumittere) quod idem eſt quod extra manum, vel extra poteſtatem alterius ponere. Et pur ẽ q̃ per tiel fait le Villein

ALſo in many and diuers caſes the Lord may make manumiſsion and enfranchiſement to his villeine. Manumiſsion is properly when the Lord makes a Deed to his villeine to enfranchiſe him by this word (*Manumittere*) which is the ſame as to put him out of the hands and power of another. And for that that by ſuch Deed

¶ M *Anumiſſion.* (l) Manumittere quod idem eſt quod extra manum vel poteſtatem ponere. (l) Glanuill lib. 5. cap. 5. Britton fol. 78. &c. 82. 97. 110. Fleta lib. 3. cap. 13. & lib. 1. cap. 44.

Quia quamdiu quis in ſeruitute eſt, ſub manu & poteſtate domini ſui eſt.

Qui in poteſtate domini ſui eſt, in manu domini ſui eſſe dicitur, ſed poſtquam manumiſſus eſt, ab illo liberabitur, & go dicitur quaſi extra manum, id eſt, extra poteſtatem domini ſui miſſus. And here is to be noted (as in many other places is obſerued) what regard Littleton hath to the true Etymologies of words.

¶ (m) *Enfranchiſement.* (Hereby Littleton explaineth Manumiſſion) and is (m) Mirror ca. 2. ſect. 28.

See Statute of manumiſsion provided by Statute of W. 1. cap. 6. & 9 of Hen. 1. cap. 78.

is deriued from the French word Franchise; that is, Libertie, and in the Common Law it hath diuers significations: Sometimes the incorporating of a man to bee free of a Company or Body Politique, as a free man of a Citie, or Burgesse of a burrough, &c. sometimes to make an Alien a Denison, and here to manumise a villeine or bondman.

Et issint chescun maner de enfranchisement fait a vn villein poit estre dit Manumission.

the villeine is put out of the hands and out of the power of his Lord it is called Manumission. And so euerie manner of infranchisement made to a villein, may bee said to bee a Manumisson.

So as this word (Enfranchisement) is more generall than Manumission, for that is properly applyed to a villeine, and therefore euerie Manumission is an Infranchisement, but euerie Infranchisement is not a Manumission. (n) There be two kindes of Manumissions, one expresse, and the other implyed. Expresse, when the Villeine by deed in expresse words is manumised and made free: the other implyed, by doing some act, that maketh in iudgement of Law the Villeine free, albeit there be no expresse words of Manumission or Infranchisement. (o) If a Villeine be manumised, albeit he become ingratefull to the Lord in the highest degree, yet the Manumission remaines good: and herein the Common Law differeth from the Ciuill Law, for Libertinum ingratum leges ciuiles in pristinam redigunt seruitutem, sed leges Angliæ semel manumissum semper liberum judicant, gratum & ingratum.

(n) Mirror, cap. 2. sect. 18.

(o) Fortescue cap. 46.

+ v. 7. Eliz. Iurisp. f. 2 f. 3

There be also some cases where the Villeine shall be priuileged from the seisure of the Lord albeit he be not absolutely manumised or infranchised. Sometimes Ratione loci, (p) as if a villeine remaine in the ancient demeane of the King a yeare and a day without claime or seisure of the Lord, the Lord cannot haue a Writ of Natiuo habendo, or seise him so long as he remaines and continues there, and the reason of this was in respect of the seruice he did to the King in plowing and tillage of the demeanes and other labours of husbandrie for the Kings benefit. And herewith agree old bookes (q) which say that this immunitie was sometime granted by common consent to the King for his profit, and for the help or ease of his villeines. (r) If a villeine be a Priest of the Kings Chappell, the Lord cannot seise him in the presence of the King, for the Kings presence is a priuilege and protection for him. Sometime Ratione professionis, (s) as if a villeine be professed a Monke, or a Nieue a Nun, as hath beene said. (t) Sometime (as some haue said) Ratione dignitatis, as if the villeine be made a Knight, &c. Sometime Ratione matrimonii, as if a Nieue marrie a free man shee is priuileged during the marriage, but not absolutely enfranchised, for if her husband dye, she is Nieue againe, vnlesse the Lord himselfe marrieth the Nieue, and then she is enfranchised for euer, as hath beene said before. And it shall not be amisse to obserue the wisdome of our Ancients with what solemnitie (for more suretie thereof) Manumissions were made: Qui seruum suum liberat, in Ecclesia vel mercato vel comitatu vel hundredo coram testibus & palam faciat, & liberas ei vias, & portas conscribit apertas, & lanceam & gladium vel quæ liberorum arma in manibus ei ponat. Our Author hauing spoken of an expresse Manumission, here followes infranchisements in Law.

(p) 39. H. 3. 6. b. F.N.B. 79. 2.

(q) Glanuil, lib. 5. cap. 5. Fleta lib. 2, cap. 44. Brit fol. 79. Mirror cap. 2. sect. 18.

(r) 27. Ass. p. 49.

(s) Glanuil, lib. 5. ca. 5.

(t) Britton vbi supra.

136. b.

Lib. Rub. cap. 78.

Sect. 205.

For when the Lord enableth the Villeine to haue an Action against him as for debt or Annuitie, &c. or giueth to the villeine a certaine and fixed estate in Lands, Tenements or hereditaments, as a Lease for yeares, this amounteth to an infranchisement not onely during the yeares but for euer, (u) and albeit the lease be made to the villeine without Deed, yet it is an infranchisement for euer.

(u) 50. E. 3. tit. vil. 15. 21. H. 7. 18.

Car si le Sñr fait a son villein vn Obligation ô certeine somme dargent, ou grant a luy per son fait vn annuitie, ou lessa a luy per son fait terres ou tenements pur terme des ans, le villeine est enfranchise.

Also if the Lord maketh to his villeine an Obligation of a certaine sum of money, or granteth to him by his Deed an annuitie, or lets to him by his Deed lands or tenements for tearme of yeares, the villeine is enfranchised.

Sect.

Sect. 206.

CAr ry si le Sñr fait vn feoffment a son villein dascun terres ou tenemts per fait, ou sans fait, en Fée simple, Fée taile, ou pur terme de vie, ou ans, & a luy liuera seisin, ceo est vn enfranchisement.

ALsō if the Lord maketh a feoffment to his villeine of any lands or tenements by Deed or without Deed, in Fee simple, Fee taile, or for terme of life or yeares, and deliuereth to him seisin, this is an enfranchisement.

This is euident and agreeth with our Bookes.

Vide 24.E.3.32. 12.H 3.tit.Vill 42.

Sect. 207.

CMes si le Sñr fait a luy vn lease des terres ou tenemēts, a tener a volunt le Sñr, per fait, ou sans fait, ceo nest ascun enfranchisemēt pur ceo q̄ il nad ascun māner d certaintie ne suertie de son estate, mes le Sñr luy poit ouster quant il voylet.

BVt if the Lord maketh to him a lease of lands or tenements, to hold at will of the Lord by deed or without deed, this is no enfranchisemēt, for that, that hee hath no manner of certaintie or suretie of his estate, but the Lord may oust him when he will.

CPer fait. So as a Deed made to a Villeine by the Lord, is no infranchisement, when the Deed transferreth no certaine or fixed estate, but reuocable at the Lords will. If the Lord release to his villeine all his right in blacke acre, and the villeine is not thereof seised, this is no infranchisement, because it is void and can giue no cause of action. If the Lord attorneth to his villeine, this is no infranchisement.

11.H.7.

Sect. 208.

CAr ry si le Sñr suist enuers son villeine vn Præcipe quod reddat, si recouer, ou soit nonsue apres appearance, c'est vn manumission, pur ceo q̄ il pussoit loyalmēt enter en la terre sans tiel suit. En mesme le manner est, si suist enuers son villeine vn action d debt, ou dac-count, ou d couenant,

ALso if the Lord sueth against his villeine a *Præcipe quod reddat*, if hee recouer or bee nonsuit after appearance, this is a manumission, for that bee might lawfully haue entred into the land without suit. In the same manner it is, if hee sue against his villeine an action of debt, or account, or of couenant, or of

CSi *Seignior suist enuers son villeine vn* Præcipe quod reddat, &c. *ceo est vn manumission*. And the principall reason hereof is, for that by this suit hee enableth the villeine to be a person able to render him the land by course of law, where the Lord without any such suit might haue entred. (a) But if the tenant in taile be of a Manor wherunto a villeine is regardant, and enfeoffeth the villeine of the Manor and dieth, the issue shall haue a Formedon against the villeine, and after the recouerie of the Manor he shall seise the villeine. And the

(a) 24 E.3. Discont. 16. Vid. Britton 78. & 126.

is derived from the French word Franchise; that is, Liberte, and in the Common Law it hath diuers significations: Sometimes the incorporating of a man to bee free of a Company or Body Politique, as a free man of a Citie, or Burgesse of a burrough, &c. sometimes to make an Alien a Denison, and here to manumise a villeine or bondman.

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(n) Mirror, cap.2. sect.18.

(o) Fortescue cap.46.

+ v. 7. Eliz. Jurisp. f. 2 f. 3

There be also some cases where the Villeine shall be priuileged from the seisure of the Lord albeit he be not absolutely manumised or infranchised. Sometimes Ratione loci, (p) as if a villeine remaine in the ancient demeane of the King a yeare and a day without claime or seisure of the Lord, the Lord cannot haue a Writ of Nativo habendo, or seise him so long as he remaines and continues there, and the reason of this was in respect of the seruice he did to the King in plowing and tillage of the demeanes and other labours of husbandrie for the Kings benefit. And herewith agree old bookes (q) which say that this immunitie was sometime granted by common consent to the King for his profit, and for the help or ease of his villeines. (r) If a villeine be a Priest of the Kings Chappell, the Lord cannot seise him in the presence of the King, for the Kings presence is a priuilege and protection for him. Sometime Ratione professionis, (s) as if a villeine be professed a Monke, or a Nieue a Nun, as hath beene said. (t) Sometime (as some haue said) Ratione dignitatis, as if the villeine be made a Knight, &c. Sometime Ratione matrimonii, as if a Nieue marrie a free man shee is priuileged during the marriage, but not absolutely enfranchised, for if her husband dye, she is Nieue againe, vnlesse the Lord himselfe marrieth the Nieue, and then she is enfranchised for euer, as hath beene said before. And it shall not be amisse to obserue the wisdome of our Ancients with what solemnitie (for more suretie thereof) Manumissions were made: Qui seruum suum liberat, in Ecclesia vel mercato vel comitatu vel hundredo coram testibus & palam faciat, & liberas ei vias, & portas conscribit apertas, & lanceam & gladium vel quæ liberorum arma in manibus ei ponat. Our Author hauing spoken of an expresse Manumission, here followes infranchisements in Law.

(p) 39.E.3.6.b. F.N.B.79.2.

(q) Glanuil, lib.5. cap.5. Fleta lib.1, cap.44. Brit fol.79. Mirror cap.2. sect.18.

(r) 27. Ass.p.49.

(s) Glanuil, lib.5. ca.5.

(t) Britton vbi supra.

136. b.

Lib.Rub.cap.78.

Sect. 205.

For when the Lord enableth the Villeine to haue an Action against him as for debt or Annuitie, &c. or giueth to the villeine a certaine and fixed estate in Lands, Tenements or hereditaments, as a Lease for yeares, this amounteth to an infranchisement not onely during the yeares but for euer, (u) and albeit the lease be made to the villeine without Deed, yet it is an infranchisement for euer.

(u) 50.E.3.tit.vil.15. 21.H.7.18.

Car si le Sñr fait a son villein vn Obligation d certeine somme dargent, ou grant a luy per son fait vn annuitie, ou lessa a luy per son fait terres ou tenements pur terme des ans, le villeine est enfranchise.

Also if the Lord maketh to his villeine an Obligation of a certaine sum of money, or granteth to him by his Deed an annuitie, or lets to him by his Deed lands or tenements for tearme of yeares, the villeine is enfranchised.

Sect.

Sect. 206.

CAr y si le Sñr fait vn feoffment a son villein vaſcun terres ou tenemts per fait, ou sans fait, en Fée simple, Fée taile, ou pur terme de vie, ou ans, & a luy liuera seisin, ceo est vn enfranchisement.

ALso if the Lord maketh a feoffment to his villeine of any lands or tenements by Deed or without Deed, in Fee simple, Fee taile, or for terme of life or yeares, and deliuereth to him seisin, this is an enfranchisement.

mes si le Roy grant terre a J. S. & le Roy, ou vn fee simple J. S. est villein le Roy, uses no enfranchisement by implication. v. Knight case. 5. Rep. 56

This is euident and agreeth with our Bookes.

Vide 24. E. 3. 32. 12. H 3. tit. Vill 42.

Sect. 207.

CMes si le Sñr fait a luy vn lease des terres ou tenemẽts, a tener a volunt le Sñr, per fait, ou sans fait, ceo nest ascun enfranchisemẽt pur ceo q̃ il nad ascun mãner d certaintie ne suertie de son estate, mes le Sñr luy poit ouster quant il voilet.

BVt if the Lord maketh to him a leaſe of lands or tenements, to hold at will of the Lord by deed or without deed, this is no enfranchiſemẽt, for that, that hee hath no manner of certaintie or ſuretie of his eſtate, but the Lord may ouſt him when he will.

CPer fait. So as a Deed made to a Villeine by the Lord, is no infranchiſement, when the Deed tranſferreth no certaine or fixed eſtate, but renocable at the Lords will. If the Lord releaſe to his villeine all his right in blacke acre, and the villeine is not thereof ſeiſed, this is no infranchiſement, becauſe it is void and can giue no cauſe of action. If the Lord attorneth to his villeine, this is no infranchiſement.

11. H. 7.

i true reason is y he is not admitted into seal - by such seall where at fealty is inioyned. to every other Court or Hale.

Sect. 208.

CAr y Sñr suist enuers son villeine vn Præcipe quod reddat, si il recouer, ou soit nonsue apres appearance, c̃ est vn manumission, pur ceo q̃ il pussoit loyalmẽt enter en la terre sans tiel suit. En mesme le manner est, si il suist enuers son villeine vn action d debt, ou dac-count, ou d couenant,

ALso if the Lord ſueth againſt his villeine a *Præcipe quod reddat*, if hee recouer or bee nonſuit after appearance, this is a manumiſſion, for that hee might lawfully haue entred into the land without ſuit. In the ſame manner it is, if hee ſue againſt his villeine an action of debt, or account, or of couenant, or of

CSi *Seignior ſuiſt enuers ſon villeine vn* Præcipe quod reddat, &c. *ceo eſt vn manumiſſion*. And the principall reaſon hereof is, for that by this ſuit hee enableth the villeine to be a perſon able to render him the land by courſe of law, where the Lord without any ſuch ſuit might haue entred. (a) But if the tenant in taile be of a Mannor whereunto a villeine is regardant, and enfeoffeth the villeine of the Mannor and dieth, the iſſue ſhall haue a Formedon againſt the villeine, and after the recouerie of the Mannor he ſhall ſeiſe the villeine. And the

(a) 24 E. 3. Diſcont. 16. Vid. Britton 78. & 126.

the reason is for that he could not seise the Villeine till hee had recouered the Mannor which was the principall, & at the time of the Writ brought, he was no villeine.

The Tenant infeoffes the Villeine of the Lord, and an estranger vpon collusion, in this case although the Lord may enter vpon the Villeine for the moitie, yet may hee haue a writ of Ward against them both without infranchisement of the villeine, for if the Lord should enter vpon the villeine, then should his seigniorie be suspended, and then could not he haue a writ of ward against the other.

The Lord vpon a Writ of Couenant brought by the Villeine, leuies a fine to his Villeine of Land which is ancient Demesne, the Lord of whom the Land is holden reuerseth the fine in a writ of deceit, albeit the Authoritie and iurisdiction of the Court is disproued, and that the Lord of the Villeine shall bee restored to the land giuen by the fine, yet is it an enfranchisement, for that he answered to the writ of Couenant, and the fine was voydable, and not voyd, and therefore being once an enfranchisement, it cannot be auoided by the reuersing of the fine.

¶ *Soit non sue (id est) non est prosecutus breue suum.* For by the Law the Plaintife is first Agent at euerie continuance, and therefore the Record saith, quod petens seu querens (naming them) obtulit se, who if hee be called, and make default, then he is said to be Nonsuit, id est, non est prosecutus, &c.

By Littleton here it appeareth that there is a Nonsuit before appearance at the returne of the writ, or after appearance at some day of continuance. (x) The difference

ou de Tresspasse, ou de huiusmodi, ceo est vn enfranchisement, pur ceo que il puissoit emprison le villeine, & prender ses biens sans tiel suit. Mes si le seignior suist son villeine per appeale de felony, ou il fuit endict de ceo deuant, ceo ne enfranchisera pas le villeine coment que le matter de lappelle soit troue encounter le Seignior, pur ceo que le Seignior ne pusſoit auer le villeine deſtre pendue sãs tiel suit. Mes si le Villeine ne fuit endict de meſme le felony, deuant lappeale ſue enũs luy, & puis eſt acquite de ceſt felony, iſſint que il recouera dammages enuers ſon ſeignior pur le faux appeale, donques le villeine eſt enfranchiſe, pur la cauſe de le iudgement de dammages a luy deſtre doñ enuers ſon ſeignior. Et pluſors autes caſes & matters y ſont, per queux vn villeine poit eſtre enfranchiſe enuers ſon Seignior, &c. Sed de illis quære.

Tresspasse, or of such like, this is an infranchisement, for that hee might imprison the Villeine, and take his goods without such suit. But if the Lord sue his Villeine by Appeale of Felony, where hee was indited of the same before, this shall not enfranchise the Villeine, albeit that the matter of appeale bee found against the Lord, for that the Lord could not haue the Villeine to bee hanged without such suit. But if the Villeine were not indited of the same Felony, before the appeal sued against him, and afterward is acquited of this Felony, so as hee recouer dammages against his lord for the false appeale, then the Villeine is infranchised, because of the iudgement of dammages to bee giuen vnto him against his Lord. And many other Cases and matters there bee by which a Villeine may bee enfranchised against his Lord, &c. But enquire of them.

(x) Lib.8.fo.58.62. Rechers case. 3.H.6.13. Brooke tit. Nonsuit 1. 8.H.6.7. 30 E.3.12.

betweene a Nonsuit and a Retraxit on the part of the Demandant or Plaintife is this. A Nonsuit is euer vpon a demand made when the Demandant or Plaintife should appeare, and he makes default. A Retraxit is euer when the Demandant or Plaintife is present in Court (as

(as regularly he is ever by intendment of Law until a day be given over, unlesse it be when a verdict is to be given, for then he is demandable.) And this is in two sorts, one Privative and the other Positive; Privative, as upon demand made, that he make default, and depart in despite of the Court, and then the entry is, (y) Et postea eodem die devenit ad barram prædict. tenens, & præd' petens tunc solennirer exactus non venit, sed à secta sua prædicta in contemptum Curiæ se retraxit, ideo consideratum est, &c. Positive, as when the entry is, Et super hoc idem querens dicit, quod ipse non vult ulterius placitum suum prædictum prosequi, sed ad inde omnino se retraxit, &c. ideo, &c. Another forme thereof is, quod idem querens fatetur se (seu cognovit se) ulterius nolle prosequi versus prædict. defend. &c. de placito prædicto. (z) A departer in despight of the Court is on the part of the Tenant, and is, when the Tenant or Defendant after appearance and being present in Court upon demand makes departure in despight of the Court, and then the entry is, Et prædict' tenens seu defendens licet solenniter exactus non revenit, sed in contemptum Curiæ recessit & defaltam fecit, ideo, &c. It is called a retraxit, because that word is the effectuall word used in the entry, as before it appeareth, and it is ever on the part of the Demandant or Plaintife. (a) Another difference betweene a Retraxit, and a Nonsuit is, that a Retraxit is a barre of all other Actions of like or inferiour nature: Qui semel actionem renunciavit amplius repetere non potest. But regularly a Nonsuit is not so, but that he may commence an action of like nature, &c. againe. For it may be, that he hath mistaken somewhat in that action, or was not provided of his proofes, or mistaking the day or the like. But yet for some speciall reasons, Nonsuit in some actions is peremptory.

(y) Tr. 5. H. 6. Rot. 320. In Com. Banco.

(z) F.N.B. 78. f. & 108. d. 19. E. 2. Villein. 31.

(a) Lib. 8. ubi supra.

In a Quare impedit, if the Plaintife be Nonsuite after appearance, the Defendant shall make a title, and have a writ to the Bishop, (b) and this is peremptory to the Plaintife, and is a good barre in another quare impedit, and the reason is, for that the Defendant had by judgement of the Court a writ to the Bishop, and the Incumbent that commeth in by that writ shall never be removed, which is a flat barre as to that presentation, and of this opinion is Littleton in our Bookes. And the same Law, and for the same reason it is in the case upon a discontinuance. *Nonsuit after apparance in le mesne vicis; Quære: 5 E. 3. 11. a*

(b) 5. E. 3. 35. 2. H. 5. 31. H. 6. 15. 22. H. 6. 44. 45. 33. H. 6. 1. 55. 19. E. 4. 9. 21. E. 4. 2. b. &c. F.N.B. 38. k. Lib. 7. fo. 27. b. Sir Hugh Portmans case.

(c) In a writ De Nativo habendo, Nonsuit after appearance is peremptory, for thereby the villein is infranchised. And so it is if two be Plaintifes in a Nativo habendo, if one be nonsuit this is the nonsuit of both, and no summons and severance doth lie in that case, albeit it be a reall action. And this is in favorem libertatis, for in a Libertate probanda, Nonsuit after appearance is not peremptory, neither is the nonsuit of the one, the nonsuit of both.

(c) 6. E. 2. Vill. 36. 12. E. 2. ibid. 28. 19. E. 2. ibid. 31. F.N.B. 78. c. 4. E. 2. Nonsuit. 29.

(d) Nonsuit in an appeale of Murder, Rape, Robbery, &c. after appearance is peremptory, and this is in favorem vitæ, for if the Defendant be acquited, and take out processe upon the Statute of W. 2. against the Abettors, or if he purchase his original writ, for that cause he may be nonsuit.

(d) 9. H. 4. 3. 12. Stamf. Pl. Com. 148. a. & 171. c. 22. Ass. 97. Fitz. Cor. 284. 22. E. 3. 6. 47. E. 3. 16. 7. H. 7. 5. 40. E. 3. Dam. 77. 17. E. 2. Coron. 386. 3. E. 2. Action sur Lest. 28.

(e) If the Plaintife in an appeale of Mayhem be Nonsuit after appearance, it is peremptory, for the writ saith, Felonice maihemavit, and therefore the nonsuit is peremptory.

(e) 43. Ass. 39. 40. Ass. 1.

(f) In an Attaint if the Plaintife after appearance be nonsuit, it is peremptory, and the reason is for the faith that the Law gives to the verdict, and for the terrible and fearefull judgement that should be given against the first Jury if they should be convicted, and therefore upon the Nonsuit, the Plaintife shall be imprisoned, and his pledges amerced. But if the processe in an Attaint be discontinued, the Plaintife may have another writ of attaint, because upon the Nonsuit there is a judgement given, but not upon the discontinuance. Note it is truly said that Exceptio probat regulam, for these cases excepted stād upon their speciall & particular reasons, & fall not within the generall reason of the rule. It is a generall rule, that nonsuit before appearance is not peremptory in any case, for that a Stranger may purchase a writ in the name of him that hath cause of action, as shall be said hereafter in this section.

(f) 32. Ass. 13. 19. Ass. 3. 20. E. 3. attaint. 42. 22. E. 3. 7. F.N.B. 108. d. (g) 11. H. 6. 23. 35. F.N.B. 35. b. 19. E. 3. tit. Sever. 14. 3. E. 2. Nonsu. 18. 19. E. 3. Sev. 16. 12. E. 3. ib. 38. E. 3. 9. 29. H. 6. 45. 38 E. 3. 35. 41. E. 3. Nonsuit. 10. 45. E. 3. 10. 2. H. 4. 2. (h) 42. E. 3. 13. 48. E. 3. 14. 28. H. 6. 3. 11. E. 2. Sev. 25. 13. E. 3. ib. 15. 18. E. 3. ib. 28. 5. E. 3. ibid. 20. 7. E. 3. 12. (i) 15. E. 3. Sever. 23. Li. 6. f. 25. Ruddocks case. (k) 20. E. 3. Severance 17. (l) 47. E. 3. 6. b. 7. Ass. 3. 29. Ass. 34. 7. H. 4. 4. 34. H. 6. 31. 25. H. 6. 19. 29. E. 3. 37. lib. 6. ub. supra. 22. H. 6. 42. 4. E. 4. 33. 19. E. 2. Nonsuit 32. 18. E. 3. ibid. 31. 20. E. 3. ib. 26. 27. 19. E. 3. ibid. 12. 3. E. 3. ibid. 17. 38. E. 3. 9. 20. H. 6. 45. 44. E. 3. 16. 19. E. 3. Severance. 16.

(g) In reall or mixt actions the nonsuit of one demandant is not the nonsuit of both, but he that makes default shall bee summoned and severed, but regularly in personall actions, the nonsuit of the one is the nonsuit of both, unlesse it be in certaine particular cases.

(h) In personall actions brought by Executors there shall be Summons and severance, because the best shall be taken for the benefit of the dead. And so it is in an action of Trespasse as Executor for goods taken out of their owne possession. Like Law in account as Executors by the receit of their owne hands.

(i) In an Audita querela concerning the personalty, the Nonsuit of the one is not the Nonsuit of the other, because it goeth by way of discharge and freeing of themselves, and therefore the default of the one shall not hurt the other.

(k) In a Quid juris clamat, the nonsuit of the one is the nonsuit of both, because the Tenant cannot attorne according to the grant.

(l) Some actions follow the nature of those actions whereupon they are grounded, as the writs of Error, Attaint, Scire facias, and the like. If a reall action be brought by severall Præcipes against two or more, if the demandant be Nonsuit against one, hee is Nonsuite against

against all, for as to the Demandant it is but one writ under one Teste. Note, Severance is twofold, viz. by Summons ad sequendum simul, and that is when one of the Demandants or Plaintifes never appeared, and by award of the Court of Nonsuit without any summons, and that is after appearance.

(m) 6.R.2. Nonsuit 13. 25.H.8.Nonsuit Br.68. 20.H.7.5.

(m) The Kings Majesty cannot be Nonsuite, because in judgement of Law, he is ever present in Court, but the Kings Attorney, Qui sequitur pro Domino Rege, may enter an ulterius non vult prosequi, which hath the effect of a Nonsuite, but in an information by an Informer, qui tam, &c. the informer may be Nonsuited.

(n) 2.H.4.ca.7. 3.E.3.21. 47.E.3.1.2. 3.E.4.1.11.

(n) At the Common Law upon every continuance or day given over before judgement, the Plaintife might have been Nonsuited, and therefore before the Statute of 2.H.4. after verdict given, if the Court gave a day to be advised, at that day the Plaintife was demandable, and therefore might have beene Nonsuite, which is now remedied by that Statute.

(o) 2.H.5. 5. 8.R.2. Nonsuit 34.

(o) But after Demurrer in Law joyned, if the Court doth give a day over, at that day the Demandant or Plaintife is demandable, and therefore may be Nonsuit, for that is not holpen by any Statute.

(p) 9.H.7.1. 21.E.3.32. Li.11.fo.39.41.Metcalfes case.

(p) And after an award to account, the Plaintife may be Nonsuit, and so note a diversity betweene an Interlocutory award of the Court, and a finall judgement.

By these few instructions you shall the more easily understand the bookes of tearmes and yeares, and other authorities of Law. And here (to returne to Littleton) it is to be noted, that albeit the Lord be Nonsuit, yet the infranchisement of the villeine doth remaine, for that grew by the appearance to the writ, and cannot be taken away by the Nonsuit subsequent. So it is if the writ doe abate, yet the infranchisement remaines.

(q) 7.H.4.8. 11.H.4.13. 9.E.4.23. 7.H.4.8.a. 7.H.7.6.b. 5.H.7.15.

¶ (q) *Apres apparance*, For otherwise a stranger may purchase a writ in his name, and therefore Littleton materially added these words, after appearance.

¶ *Præcipe.* There bee three kindes of Præcipes. 1. A Præcipe quod reddat, whereof Littleton here speaketh, 2. A Præcipe quod permittat, and 3. A Præcipe quod faciat, whereof you may reade plentifully in the Register, and Fitzherberts natura brevium, and belongs not properly to this Treatise.

¶ *Account.* Of this sufficient hath beene said before.

Vid.sect.748.Lib.4.fol.80. Nokes case.F.N.B.145.

¶ *Covenant.* Conventio. Hereof there be two kinds, viz. a Covenant personall, and a Covenant reall: and a Covenant in Deed, and a Covenant in Law.

(r) W.2.cap.12. 22.Ass.p.39. 33.H.6.2. 14.H.7.2.40. Ass.18. 40.E.3.42.

¶ *Ou il fuit endite de ceo.* (r) For if the Villeine be not first indited of it, then upon the acquittall of the Villeine, the Villeine shall recover damages against the Lord by the Statute of W.2. quia multi per malitiam, &c. and consequently shall bee enfranchised. But if the Villeine be formerly endited of the Felony, then though the Villeine be acquited upon the Appeale, he shall recover no damages against the Lord. For whersoever the Lord giveth to the Villeine a just cause of action, he is enfranchised. (f) And therefore if the Lord kill his Villeine, his sonne and heire shall have an Appeale, and thereby his heire shall be enfranchised, because the offence of the Lord, gave to the heire a just cause of action against the Lord.

(f) Kelway. 134.

Section 209.

¶ *Que il ad estre Custome, &c.*

Here some may object that such a custome may have a lawfull beginning, for Littleton in the beginning of this Chapter, Sect. 174. alloweth that (a) a freeman may take lands of the Lord to bee holden of him, that is, to pay a fine for the marriage of his Sonne or Daughter, and therefore (b) some have thought that such a custome generally within the Mannor should be good. But the

(a) 10.E.3.23. Roger de Vales, case 15.E.3.Aid.33.

(b) 34.H.6.15.a.per.Litt.

¶ Item si Seignior dun manor voile prescriber, que il ad estre custome deins son manor de temps dont memory ne curt, que chescun Tenant deins mesme le mannor q̄ maria sa file a ascun home sans licence de le seignior del man-

Also if the Lord of a Manor will prescribe that there hath beene a custome within his Mannour, time out of minde of man, that every Tenant within the same Mannor, who marieth his Daughter to any man without licence of the Lord of the

nor

noz, ferra fine, & ont faire fine al Seignior del mannoz de le temps esteant, cest prescription est void. Car nul doit faire tiels fines forsq; tantsolemēt villeins. Car chescun franke home poit frankement marier sa file a que pleist a luy & sa file. Et pur ceo que cest prescriptiō est encounter reason, tiel prescription est voyd.

Mannour, shall make fine, and have made fine to the Lord of the Mannor for the time being, this prescription is voyd: For none ought to make such fine but onely Villeines. For every free man may freely marry his daughter to whom it pleaseth him and his daughter: and for that this prescription is against reason, such prescription is voyd.

answer is, that though it may be so in a particular case upon such a speciall reservation of such a fine upon a gift of land, yet to claime such a fine by a generall custome within the Mannor, is against the freedome of a freeman that is not bound thereunto by particular Tenure. But a custome may be alledged within a mannor, (b) That every tenant (albeit his person be free) that holdeth in bondage or by native tenure, the freehold being in the Lord, shall pay to the Lord for the marriage of his daughter without licence, a Fine: and it is called Marchet, as it were a Chete or Fine for marriage. And here Littleton saith, that none ought to pay such fines but villeines, (that is) either villeines of blood, or freemen holding in villenage or base Tenure. So note a diversity betweene a freeholder and a freeman holding in Villenage: Villeines use to pay to their Lords in acknowledgment of their bondage for their severall heads, and thereupon it is called Chevage, Chevagium of the French word Chiefe, as it were the service of the head. Of which Bracton saith, (c) Chivagium dicitur recognitio in signum subjectionis & dominii de capite suo. And sometimes it is written Chivage, but more properly Chiefage. (d) Chevagium signifieth also a great Misprision for any subject to take summes of money, or other gifts yearly in name of Chevage, because they take upon them to be their chief heads or Leaders.

(b) 43.Ed.3.14.H.6.15.

(c) Bracton lib.1.cap.10. Britton fol.79.b.

(d) 27.Ass.44.

¶ *Pur ceo que cest prescription est encounter reason ceo est voyd.* This containes one of the Maximes of the common Law, viz. That all customes and prescriptions that be against reason, are voyd.

Max

Sect. 210.

¶ Mes en le County de Kent, ou tres & tenements sont tenus en Gavelkind la ou per le custome & use de temps dont memory ne curt, les fits males doient obelment enheriter, ceo custome est allowable, pur ceo que il estoit obe ascun reason, pur ceo que chescun fits est auxy graunde gentlehome come leigne fits est,

But in the County of Kent where lands and tenements are holden in Gavelkinde, there where by the custome and use out of minde of man the issues male ought equally to inherit, this custome is allowable, because it standeth with some reason, for every sonne is as great a gentleman as the eldest sonne is, and perchance will grow

¶ *En (e) le County de Kent.* For that in no County of England Lands (f) at this day be of the nature of Gavelkinde, of commō right, saving in Kent onely. But yet in divers parts of England, within divers Mannors and Seigniories the like custome is in force.

(e) Vide Lestatute de Consuetudinibus Cancia ann.21.E.1.2.E.3.12. 3.E.3.21.38.23.Ass.pl.12. 8.E.3.42.b.

(f) Vide Mirror cap.1. Sect.3.

¶ *En Gavelkinde.* That is, Gave all kinde: for this custome giveth to all the sons alike.

¶ *Les fitz males inheriter.* And this is the generall custome extending to sonnes. But yet (g) by custome when one brother dieth without issue, all the other

(g) 23.Ass.pl.21.

other brethren may inherit.

¶ *Chescun fitz est auxy grande gentlehome come leigne fitz est.* By this it appeareth, that Gentry and Armes is of the nature of Gavelkinde, for they descend to all the sonnes, every sonne being a Gentleman alike. which Gentry and Armes doe not descend to all the brethren alone, but to all their posterity: but yet Jure primogenituræ, the eldest shall beare as a badge of his birthright, his fathers Armes without any difference, for that as Littleton saith Sectione he is more worthy of blood, but all the younger brethren shall give severall differences, & additio probat minoritatem, and (h) hæreditas inter masculos jure civili est dividenda.

& per case a pluis graunde honor & valour cresseta sil avoit rien p ses ancesters, ou auterment, peradventure il ne puissoit tielment cresser, &c.

to greater honour and valour if he hath any thing by his Ancestors, or otherwise peradventure he would not encrease so much, &c.

(h) Fortescue cap. 4.

¶ *Ou auterment peradventure il ne puissot tielment cresser.* The reason of this is rendred by the Poet:

Horace. Haud facile emergunt quorum virtutibus obstat
Res angusta domi.

But now by the Statute of 31. H. 8. a great part of Kent is made descendable to the eldest sonne, according to the course of the Common Law, for that by the meanes of that custome, divers ancient and great Families after a few descents came to very little or nothing.

31. H. 8. c. 3. V. 18. H. 6. c. 1.

In plures quoties rivos deducitur amnis,
Fit minor, ac undâ deficiente, perit.

Section 211.

V. Sect. 165.

¶ *PEr custome appel' Burgh English.* Of this custome Littleton hath spoken before in the chapter of Burgage. And in our Bookes there is a special kind of Borough English, (i) as, it shall descend to the yonger sonne, if he be not of the halfe bloud, and if he be, then to the eldest sonne.

(i) 32. E. 3. tit. Age 81.

(k) Mic. 10. Ja. Eliots case. in Briefe de Faux judgement.

(k) Within the Mannor of B. in the County of Berke, there is such a custome, That if a man have divers daughters, and no son, and dieth, the eldest daughter shall only inherit; and if he have no daughters, but sisters, the eldest sister by the custome shall inherit, & sometime the youngest. And divers other customes there be in like cases. And herewith agreeth Britton, who saith, (l) De terres des ancientes demeynes soit use solonque le ancient usage del lieu, dount en ascun lieu le tient lieu pur usage: que le heritage soit departable entre touts les enfants freres & sores, & en ascun lieu que le eigne avera tout, & en ascun lieu que le puisne frere avera tout.

(l) Britt. 187. b.

¶ *Pur cause de son juventute poet le pluis meins de touts ses freres luy meisme aider, &c.* Here by (&c.) are implyed those causes wherefore a youth is lesse able to ayd himselfe, &c. which the Poet briefely and pithily expresseth thus:

¶ ITem, lou per custome appel Burgh English en ascun Burgh, le fits puisn̄ inherita touts les tenements, &c. cē custome estoit ove aſ̄ certaine reason, pur ceo que le fits puisne (sil fault pere & mere per cause de son juventute poit le pluis meins de touts ses freres luy meisme aider, &c.

ALso where by the Custome called Burrough English, in some Burrough the yongest son shall inherit all the tenements, &c. this custome also stands with some certaine reason, because that the younger sonne (if he lacke father and mother) because of his young age, may least of all his brethren helpe himselfe, &c.

Inherbis

Imberbis Juvenis tandem Custode remoto,
Gaudet Equis, Canibusque & Aprici gramine Campi,
Cereus in vitium flecti, Monitoribus asper,
Utilium tardus provisor, prodigus æris,
Sublimis, cupidusque, & amata relinquere pernix. Horace.

And againe, no living creature more infirme than Man:

Nil homine infirmum tellus animalia nutrit
Inter cuncta magis——— Homer.

Sect. 212.

¶ Mes si home voile prescriber, que si ascuns aũs fueront sur les demesnes de son mannor la dammage feasants, que le Seignior del mannor pur le temps esteant, ad use eux de distreyner, & le destresse retaine tanque fine fuit fait a luy pur le dammage a sa volunt, cest prescription est void, pur ceo que il est encounter reason, que si tort soit fait a un home, que il de ceo serr̃ son Judge demesne: Car per tiel voy sil avoit dammages forsque al value dun mail, il pusoit assesser & aũ pur ceo C.k. que serroit encounter reason. Et issint tiel prescription, ou ascun aut̃ prescription use (si ceo soit encounter reason) ceo ne doit estre allow devant Judges: Quia malus usus abolendus est.

But if a man will prescribe, that if any cattell were upon the demeanes of the Mannor, there doing damage, that the Lord of the Mannor for the time being hath used to distreine them, and the distresse to retaine till fine were made to him for the damages at his will, this prescription is voyd: because it is against reason, that if wrong be done any man, that he thereof should be his own Judge, for by such way, if he had dammages but to the value of an halfpenny, he might assesse and have therefore C. li. which should be against reason. And so such prescription, or any other prescription used, if it be against reason, this ought not, nor will not bee allowed before Judges: *Quia malus usus abolendus est.*

¶ *Est encounter reason que si tort soit fait a un home, que il de ceo serra son judge demesne.* For it is a Maxime in Law, Aliquis non debet esse judex in propria causa. * And therefore a fine levied before the Baylifes of Salop, was reversed, because one of the Baylifes was partie to the fine, quia non potest esse judex & pars. 10.E.3.23.4.E.3.54. 7.E.3.24.38.E.3.18. 2.H.3.4.3.H.4.8. H.6.19. 5.H.7.9.b. *Hil.4.H.4. Coram Rege Salop.

¶ Malus usus abolendus est: And every use is evill, that is (as our author saith) against reason, Quia in consuetudinibus non diuturnitas temporis, sed soliditas rationis est consideranda.

And by this rule cited by our Author, at the Parliament holden at Kilkenny in Ireland, Lionel Duke of Clarence being then Liebetenant of that Realme, the Irish customs called there the Brehon Law, (for that the Irish call their Judges, Brehons) was wholly abolished, for that (as the Parliament sayd) it was no Law, but a lewd custome, & malus usus abolendus est. An.40.E.3.at Kilkenny. The Brehon Law. Vide Sect.265.

But our Student must know, That King John in the twelfth yeare of his reign went into Ireland, and there by the advise of grave and learned men in the laws whom hee carried with him, by Parliament de communi omnium de Hibernia consensu ordained and stablished, that Ireland should be governed by the

the Lawes of England, which of many of the Irish men, according to their own desire, was joyfully accepted and obeyed, and of many the same was soone after absolutely refused, preferring their Brehon Law before the just and honourable Lawes of England. Rex, &c.

Rot.Pat.11.H.3.
L.7.fo.22.b.Calvins case. Baronibus, militibus, & omnibus libere tenentibus L. Salutem, Satis ut credimus vestra audivit discretio, quod quando bonæ memoriæ Johannes quondam Rex Angliæ pater noster venit in Hyberniam, ipse duxit secum viros discretos & leges peritos, quorum communi consilio, & ad instantiam Hybernensium statuit & præcepit leges Anglicanas in Hybernia, ita quod leges easdem in Scripturas redactas reliquit sub sigillo suo ad Scaccarium Dublin.

Rot.patent.18.H.3.
M.17.N.21. Rex Comitibus, Baronibus, militibus, & liberis hominibus, & omnibus aliis de terra Hiberniæ salutem. Quia manifestè esse dinoscitur contra coronam & dignitatem nostram & consuetudines & leges regni nostri Angliæ quas bonæ memoriæ Dominus Johannes Rex pater noster, de communi omnium de Hybernia consensu, teneri statuit in terra illa, quod placita teneantur in curia Christianitatis de advocationibus Ecclesiarum & Capellarum vel de laico feodo vel de catallis quæ non sunt testamento vel matrimonio. Vobis mandamus prohibentes quatenus hujusmodi placita in Curia Christianitatis nullatenus sequi præsumatis in manifestum dignitatis & Coronæ nostræ præjudicium, scituri pro certo, quod si feceritis, dedimus in mandatis Justiciario nostro Hyberniæ, Statuta curiæ nostræ in Anglia contra transgressiones hujus mandati nostri cum Justicia procedat, et quod nostrum est exequatur. In cujus, &c. Teste Rege apud Winchcomb, 28. die Octobris, anno regni nostri 18. Et mandatum est Justiciario Hyberniæ, per literas clausas quod prædictas literas patentes publicè legi & teneri faciat.

Rot.Patent.30.H.3. Rex, &c. pro communi utilitate terræ Hyberniæ, & pro Unitate terrarum, provisum est, quod omnes leges & consuetudines quæ in regno Angliæ tenentur, in Hibernia teneantur, & eadem terra eisdem legibus subjaceat, ac per easdem regatur, sicut Johannes Rex cum illic esset, statuit & firmiter mandavit. Ideo volumus, quod omnia brevia de communi jure quæ currunt in Anglia similiter currant in Hybernia sub novo sigillo Regis: In cujus, &c. Teste me ipso apud Woodstocke. wherein it is to be observed, That union of Lawes is the best means for the unity of Countries.

*Tri.13.E.1.Coram Rege in Thesaur. in longo placito. *Una et eadem lex esse debet tam in Regno Angliæ quam Hyberniæ.

(m)2.R.3.12. In camera stellata. 1.H.7.3. (m) Terra Hyberniæ inter se habet Parliamentum & omnimodas curias prout in Anglia, & per idem Parliamentum facit leges & mutat leges, & illi de eadem terra non obligantur per statuta in Anglia, quia hi non habent Milites Parliamenti.

By an Act of Parliament (called Poynings Law) holden in Ireland in the tenth yeare of Henry the seventh, it is enacted, That all statutes made in this Realme of England before that time, should be of force and be put in ure within the Realme of Ireland, which (though it be by way of digression) is not unnecessary for our Student to know. But now let us heare our author.

SOme have divided rents into foure kindes, viz. rent service, rent charge, rent distreynable of common right, (wherof somwhat shal be said in this chapter) and rent secke.

(a) Fleta lib.3.c.14. Britton cap.41. Mirror cap.2.Sect.16. Pl.Com.132.b. *Li.10.148.Clens case. ¶ *Rent.* In Latine Redditus, (a) by some Dicitur à redeundo, quia retro it, & quotannis redit. *And others say it is derived of reddere, for that the Rent is reserved out of the profits of the land, & is not due till the tenant or Lessee take the profits, for reddendo inde or solvendo, or reservando inde, or the like, (b) is as much to

¶ TRoys maners de Rents y sont, cestascavoir, Rent service, Rent charge, & Rent secke: Rent service est lou le Tenant tient sa terre de son Seignior per fealty, & certain Rent, ou per homage, fealtie, & certain Rent, ou p auts services & certaine Rent: & si rent service

THree manner of rents there bee, that is to say, Rent service, rent charge, and Rent secke. Rent service is, where the Tenant holdeth his land of his Lord by fealtie, and certaine rent, or by homage, fealtie, and certaine rent, or by other services, and certaine rent, and if rent service at any day that

soit

foit a aſcun jour (que doit eſtre pay) adeverere, le Sūr poit diſtrainer pur ceo de common droit.

it ought to be payed, be behind, the Lord may diſtraine for that of common right.

ſay as the Tenant or Leſſee ſhall pay ſo much out of the profits of the lands, for Reddere nihil aliud eſt quam acceptum aut aliquam partem ejuſdē reſtituere. Seu reddere eſt quaſi retro dare, and hereof commeth Redditus for a Rent.

Here note for the better underſtanding of ancient Records, Statutes, Charters, &c. Gabel, or Gavell, gablum, Gabellum, Gabellettum, Galbellettum and Gavillettum, doe ſignifie a Rent, cuſtome, Duty, or Service, yeelded or done to the King or any other Lord, as Wallingford continet 276. Hagas, i. domos reddentes 9. libras de gablo, i. de redditu. And Oxford, hæc urbs reddebat pro theolonio & Gablo regi 20. l'. & Sextarios mellis, comiti Alpharo 10. libras. And this is the legall ſignification thereof. Domeſday. Statutum de gavilletto. anno 10. E. 2.

¶ *Rent ſervice.* It is called a Rent ſervice, becauſe it hath ſome corporall ſervice incident unto it, which at the leaſt is fealty, as here it appeareth.

¶ *Saterre.* (c) A Rent ſervice cannot be reſerved out of any inheritance but ſuch as is manurable, whereinto the Lord may enter and take a diſtreſſe, as in Lands and Tenements, Reverſions, Remainders, and as ſome have ſaid, out of the herbage of lands, and regularly not out of any inheritances incorporeall, or that lye in grant. (d) By act of Law one rent or ſervice may iſſue out of another, as if A. before the ſtatute of Quia emptores terrarum, had given lands to B. to hold to him by fealty, and ten ſhillings rent, and B. had made a feoffement in fee to C. &c. whereby there was a Meſnalty created, in this caſe C. ſhould hold of B. either by the ſame ſervices the Law created, or ſuch as he ſpecially reſerved, and B. did by operation of Law hold thoſe ſervices of A. by fealty and ten ſhillings rent, that is to ſay, rent and ſervice out of rent and ſervice, and if the rent be behinde, the Lord paramount may diſtraine upon the land for his rent, for both Meſnalty and Seigniory doe iſſue out of the land, the Meſnalty immediately, and the Seigniory mediately, which is worthy of due conſideration and obſervation. Vide Sect.218. (c) 44.E.3.45.li.5.fol.4. Seignior Mountjoys caſe. 9.Aſſ.24.30.Aſſ.5. 17.E.3.75.Lib.7.fo.23. Reverſions lyes in grant Buts caſe. Pl.Com.139. (d) 3.H.6.21.5.H.7.36. 21 H.7.39.1.H.4.82. 10.H.6.12.19.E.3.tit. Gard.40.21.H.6.11.

¶ *Certaine rent.* (e) For the rent muſt be certaine, or which may be reduced to a certainty, for id certum eſt, quod certum reddi poteſt. (f) Continetur carta reddendo inde annuatim ad tales terminos vel faciendo inde talia ſervitia, vel tales conſuetudines, quæ omnia debent eſſe certa & in carta expreſſa, &c. But of this I have ſpoken Sect.136. And the rent may as well be in delibery of Hens, Capons, Roſes, Spurres, Bowes, Shafts, Horſes, Hawkes, Pepper, Comine, wheat, or other profit that lyeth in render, office, attendance, and ſuch like: as in payment of money. (g) But a man upon his feoffment or conveyance cannot reſerve to him parcell of the Annuall profits themſelves as to reſerve the veſture or herbage of the land, or the like, for that ſhould be repugnant to the grant, Non debet enim eſſe reſervatio de proficuis ipſis, quia ea conceduntur, ſed de redditu novo extra proficua. (e) Britton fol.100.2. (f) Fleta lib.3.cap.14. (g) 38.H.6.38.2.

¶ *Poet diſtreine pur ceo.* For where there is fealty, &c. incident to the rent, there is a diſtreſſe incident alſo thereunto. (h) But it is to be underſtood that for a rent or ſervice, the Lord cannot diſtreine in the night, but in the day time, and ſo it is of a rent charge: but for Dammage feaſaunt one may diſtreine in the night, otherwiſe it may be the beaſts will be gone before he can take them. (h) Mirror cap.2.Sect.16. 10.E.3.Avowry 137. 11.H.7.5.

¶ *De common droit.* Of common right, (i) that is, by the common law ſo called, becauſe the common Law is the beſt and moſt common birth-right that the ſubject hath for the ſafegard and defence not onely of goods, lands, and revenues, but of his wife & children, his body, fame and life alſo. So as the meaning of Littleton in this particular caſe is, that the Lord may diſtreine for his rent of common right, that is, by the Common law without any particular reſervation or proviſion of the party. And it is to be obſerved that the commō law of England ſometime is called right, ſometime common right, & ſometime Communis juſtitia. In the grand Charter the common law is called right, rectum. Nulli vendemus, nulli negabimus aut differemus juſtitiā vel rectū. In the ſtatute of W.1.c.1. it is called Common droit. En primes voet le roy, & cōmāde que le peace de S. Eſgliſe & de la terre ſoit bien garde & maintain ē touts points, & que cōmō droit ſoit faits a touts auxibiē aux pours, come aux riches ſauns regard de nulluy; which agreeth with the anciēt law in the time of King Edgar, Porro autē has populo quas ſervet proponim, leges, primum publici juris beneficio quiſquā fruit', idq; ex æquo & bono, ſive is dives ſive inops fuerit jus reddit'. And Fleta ſaith, Itē quod pax Eccleſiæ & terræ inviolabiliter obſervet' & qd' cōmunis juſtitia ſingulis pariter exhibeatur. And all the Cōmiſſions & Charters for execution of Juſtice, are Facturi quod ad juſtitiā pertinet ſecundum legem & conſuetudinem Angliæ. So as in truth Juſtice is the daughter of the Law, for the Law bringeth her forth. And in this ſenſe being (i) W.1.ca.1.2.H.4.cap.1. 7.H.4.ca.1.4.H.8.cap.8. Lamb.fol.78.inter Leges Regis Edgari. Fleta, lib.1.ca.29.

being largely taken, as well the ſtatutes and cuſtomes of the Realm, as that which is properly the Common Law, is included within Common droit. Littleton in this his Treatiſe nameth Common droit ſixe times.

Vide Sect.214.216.226. 252.331.

Sect. 214.

35.H.6.34.

¶ *Auns fait.* For it is a rule in Law that a rent ſervice may be reſerved without deed.

Reg.

Vide Sect.131.132.

¶ *En meſme le manner ſi leaſe ſoit fait, &c.* For theſe be rents Services, becauſe fealty is incident to theſe Rents, for (as it hath bin ſaid before) a leſſee for life or yeares ſhall doe fealty. And if a man make a Leaſe at will, reſerving a Rent, the Leſſee ſhall not doe fealty, and yet the Leſſor ſhall diſtreine for the rēt of cōmon right.

¶ *Rendant*, commeth of the word Reddo.i.rem pro re dare, & ſignifieth yeelding or repaying, but of this I have ſpoken before in this Chapter. Sect.213.

¶ ET ſi home voyloit doner terres ou tenements a un auter en taile, rendant a luy certaine Rent p an, il de common droit poit diſtreiñ pur le rent aderere, coment que tiel done fuit fait ſans fait, pur ceo que tiel Rent eſt Rent ſervice. En mñ le manner eſt, ſi leas ſoit fait a un hõe pur terme de vie, ou dauter vie, rendant al leſſor certaine Rent, ou pur terme de ans rendant certaine Rent.

AND if a man will give Lands or Tenements to another in the tayle, yeelding to him certaine rent by the yeare, hee of common right may diſtraine for the rent behind, though that ſuch gift was made without deed, becauſe that ſuch Rent is Rent Service: In the ſame manner it is, if a leaſe be made to a man for life or the life of another rendring to the Leſſor certaine Rent, or for tearme of yeares rendring Rent.

Sect. 215.

¶ *Reverſion.* Reverſio commeth of the Latine word Reverror, and ſignifieth a returning againe, and therefore Reverſio terræeſt tanquam terra revertens in poſſeſsione donatori ſive hæredibus ſuis poſt donum finitum, &c. as in the caſes that Littleton here hath put.

¶ *Il covient que le reverſion, &c. ſoit en le donor ou leſſer. &c.* This is not to be underſtood only of a reverſion immediately expectant upon the gift or leaſe. For if a man maketh a gift in tayle, the remainder in tayle reſerving a rent, and keepe the reverſion in himſelfe, this is a Rent ſervice.

¶ *Reſervant.* Reſerver commeth of the Latine

¶ MES ẽ tiel cas ou home ſur tiel done ou leaſe voile reſerver a luy rent ſervice, il covient que le reverſion de les terres & teneñts ſoit en le donor ou leſſor, car ſi home voile faiṫ feoffement en fee, ou voile donor terres en taile, le remaindre oultre en fee ſimple ſans fait, reſervant a luy certaine rent, tiel reſervāt eſt void, pur ceo que nul reverſion remaine en le donor & tiel tenant

BUT in ſuch caſe where a man upon ſuch a gift or Leaſe will reſerve to him a Rent ſervice, it behoveth that the reverſion of the Lands and Tenements be in the Donor or Leſſor. For if a man will make a feoffment in fee, or will give lands in taile, the remainder over in fee ſimple without deed, reſerving to him a certaine Rent, this reſervation is void, for that no reverſion remaines in the Donor, and ſuch

tient

tient la terre immediatim de le seignior de que son donor tenoit, &c.

tenant holds his Land immediately of the Lord of whom his Donor held, &c.

word Reservo, that is, to provide for store. As when a man departeth with his land he reserveth or provideth for himselfe a rent for his owne livelihood. And sometime it hath the force of saving or excepting: So as (k) sometime it serveth to reserve a new thing, viz. a Rent, and (l) sometime to except part of the thing in esse that is granted.

(k) 8.E.4.48. 26.Ass.Pl.66.
(l) 35.H.6.34.

And it is to be understood that in the case of the gift in taile, lease for life or years, the fealty is an incident inseparable to the reversion, so as the Donor or Lessor cannot grant the reversion over, and save to himselfe the fealty or such like service, but the Rent he may except, because the Rent although it be incident to the reversion, yet it is not inseparably incident. If a man maketh a gift in taile without any reservation, the donee shall hold of the donor by the same services that he held over. (m) But otherwise it is of an Estate for life or yeares, for there if he reserveth nothing, he shall have fealty onely which is an incident inseparable to the reversion, as hath beene said.

(m) Litt.fo.4. Old tenures 5. 38.E.3.7.33.H.6.7.

¶ *Le remaindre ouster en fee simple sans fait.* Here it appeareth that if a man maketh a gift in taile, the remainder in fee without deed, (n) the remainder is good, and passeth out of the donor by the livery of seisin, and so it is of a lease for life or yeares, the remainder over in fee for the particular estate and the remainder to many intents and purposes, make but one estate in judgement of Law. Vide Sect.60.

(n) 40.E.3.10.19.E.4.1. 12.E.4.16.15.E.4.18. 18.E.4.12.18.H.8.4. 3.H.7.13.F.N.B.219. 11.H.4.39.38.E.3.36. 41.E.3.8.

¶ *Remaindre*, In legall Latine is remanere, comming of the Latine word remaneo, for that (o) it is a remainder or remnant of an estate in Lands or Tenements expectant upon a particular estate created together with the same at one time, as in the cases here of Littleton appeareth.

(o) Lib.2.fol.51. Cholmeleies case.

Sect. 216.

¶ Et ceo est per force de lestatute de Quia emptores terrarum, car devaunt le dit estatute si hõe feisoit un feoffement en fee simple, per fait ou sans fait, rendant a luy & a ses heires certaine rent, ceo fuit rent service, & pur ceo il puissoit distreine de common droit, & sil fuit nul reservation dascun rẽt ne dascun service, uncore le feoffee tenust del feoffor per autiel service que le feoffor tenust oustre de son Seignior procheine Paramount.

AND this is by force of the Statute of *Quia emptores terrarum*, for before the Statute, if a man had made a feoffment in fee simple by deed or without deed yeelding to him and to his heires a certaine rent, this was a rent service, and for this he might have distrained of common right. And if there were no reservation of any Rent nor of any Service, yet the Feoffee held of the Feoffor by the same Service as the Feoffor did hold over of his Lord next paramount.

Ipsæ etenim leges cupiunt ut jure regantur.

¶ Quia emptores terrarum.

Hereof is spoken before in the chapter of Frankalmoigne, Sectione 140.

¶ *Per fait ou sans fait, &c.* For all rent services may be reserved without deed (as hath beene said) and as it appeareth here. v. s. 214.

And at the Common law if a man had made a feoffment in fee by parol he might upon that feoffment have reserved a rent to him and his heires, because it was a rent service, and a tenure thereby created.

¶ *Et sil fuit nul reservation, &c. le feoffee tenust del feoffor per autiels services, &c.* This is evident and agreeth with our Bookes (*) that in this case the Law created the tenure, whereinsit is to bee observed how the Law regardeth equity and equalitie without any provision or reservation of the party.

(*) Britton fol.102. 2.E.3.33. 25.E.3.gard.27. 49.E.3.10.22.Ass.pl.53. 7.H.4.14. 23.E.3.avowrie 255. 4.H.6.Littl cap.taile. Sect.

Sect.

Sect. 217.

Britton fol.169. Fleta Lib.3.cap.14. Vide Sect.370.

¶ *Per fait indent.* It cannot be a Deed indented unlesse it bee actually indented, for albeit the words of the Deed be, Hæc Indentura, &c. yet if it bee not indented indeed, it is no Indenture, but if the Deed be indented, albeit the words of the deed be not hæc Indentura, yet it is an Indenture.

(p) 8.E.4.8.11.H.7.12. 35.H.6.34.20.E.4.13. 17.E.3. 12.H.4.17.

And it is holden that (p) if a feoffment in fee be made by deed poll reserving a Rent, this reservation is good, for when the Feoffee accepts the deed and Livery of the land, he agreeth to the rent and the rent is reserved by the words of the Feoffor, and not by the grant of the Feoffee, but of this more hereafter. In the meane time it is to bee noted, that of ancient time a Deed indented was called Charta chyrographata, or Charta communis, because each party had a part. And a Deed poll was called Charta de una parte (q) Chartæ autem de pura donatione de simplici penes donatorium & ejus hæredes debet remanere, communes vero duplicari debent, ita quod quilibet habet partem suam. Vel si una sit tantum, tunc in equa manu communis amici utriusque ponatur salvo custodiend' dum cuilibet partium necesse fuerit exhibendum.

(q) Fleta lib.3 cap.14. Britton fol.100.

¶ *Reservant a luy.* (r) Note it is a maxime in law that the rent must be reserved to him frō whom the state of the land moveth, and not to a stranger. (s) But some doe hold that otherwise it is in the case of the King.

(r) 32.E.2.Feoffments 8. 18.E.2.Ass.381.

(s) 35.H.6.36.

¶ *Et tiel rent est rent charge.* It is called a Rent charge, because the Land for payment thereof is charged with a distresse. If it be to the whole value of the land, or to the fourth part of the value, then the rent is called a fee farme. Here Littleton putteth his Case, and so did he in the

Old tenures. Britton.cap.66.164. F.N.B.210.Briac.86.

¶ Mes si home per fait endent a cel jour, fait tiel done en fee taile, le remainder ouster en fee, ou lease a terme de vie, le remainder ouster en fee, ou un feoffment en fee & per īn lendenture il reserve a luy, & a ses heires un certaine rent, & que si le rent soit aderere, q̄ bien lirroit a luy & a ses heires a distreiner &c. tiel rent est rent charge, pur ceo que tielx terres ou tenements sont charges ove tiel distresse per force de le scripture tantsolement, & nemy de common droit. Et si tiel home sur fait endent reserva a luy, & a ses heires certaine rent sans ascun tiel clause mise en le fait, que il poit distreine, donque tiel rent est rent secke, pur ceo que il ne poit aver le rent, si ceo soit deny per meane de distresse, & sil ne fuit unques en cest cas seisie de la rent, il est sans remedie, come serra dit apres.

But if a man by Deed indented at this day, maketh such a gift in fee taile, the remainder over in fee, or a lease for life, the remainder over in fee, or a feoffement in fee, and by the same Indenture hee reserveth to him and to his heires a certaine rent, and that if the rent be behind, that it shall be lawfull for him and his heires to distreine, &c. such a rent is a rent charge, because such Lands or Tenements are charged with such distresse by force of the writing onely, and not of common right. And if such a man upon a deed indented reserve to him and to his heires a certaine rent without any such clause put in the deed, that he may distreine, then such rent is rent secke, for that he cannot come to have the rent if it be denied, by way of distress. And if in this case hee were never seised of the rent, he is without remedie, as shall be said hereafter.

the next Section before, of a clause of distresse generally granted. (t) If man granted a rent out of certaine land, pro consilio impenso & impendendo, To have and to hold to him and to his Assignes for terme of his life, payable at foure Feasts in the yeare, and for default of payment upon demand, it should be lawfull for him to distreyne; the Grantee granted the rent over: the Assignee after one of the dayes demanded the rent, and destreyned, and the distresse adjudged lawfull, for hee needs not make a demand at any of the dayes, as in the case of re-entry, but he may demand it when he will, for it is onely to entitle him to his remedy for his meere duty.

(t) L.7.f.28.b. Mauds case 56 H.43.El.in Com.Banco. Rot.1108. inter Maund & Gregory. M.40.& 41. El. in Com. Banco inter Stanly & Read. 18.El. Dyer 348.

¶ *Distreyne, &c.* Here by (&c.) is implyed what things are distreynable, which elsewhere is expressed at large. Also where the distresse is to be taken in the same land, and in some other, which with many differences is set downe in his proper place. Vide sect. 226.

¶ *Il serra sans remedie.* Note that upon a reservation of a Rent upon a Feoffement in fee by deed indented, (w) the Feoffor shall not have a writ of Annuity, because the words of reservation, as reddendo, solvendo, faciendo, tenendo, reservando, &c. are the words of the Feoffor and not of the Feoffee, albeit the Feoffee by acceptance of the state, is bound thereby.

(w) 33.E.3. Annuity 52. 1.H.2.4.5.6.Ass.Pl.66. 21.E.4.

And where Littleton putteth his case, when a reservation is made upon an estate that passeth by livery, the same Law it is, if a man at this day doe bargaine and sell his Land by deed indented and inrolled according to the Statute, a rent may be reserved thereupon, for albeit an use had onely passed by the Common Law, yet now by the statute of 27.H.8. cap. 10. the use and possession passe together, and so it was adjudged. * And so it is of a grant of a reversion or remainder, and any other conveyance of Lands or Tenements, whereby any estate doth passe.

* Mich.39 & 40.El. in Com.Banco inter Wicks & Tillard.

Sect. 218.

¶ A Vry si home seisie de certain terre graunt per vn fait polle, ou per indenture vn annual rent issuant hors de mesme la terre a vn auter en fee ou en fee taile, ou per terme de vie, &c. ouesq̄ clause de distresse, &c. donques ceo ē rēt charge, & si le grant soit sans clause d̄ distresse, donques il est Rent seck. Et nota, que Rent seeke idem est quod redditus siccus, pur ceo que nul distresse est incident a ē.

ALso if a man seised of certaine Land grant by a Deed poll, or by Indenture, a yearely rent to be issuing out of the same land, to another in fee or in fee taile, or for terme of life, &c. with a clause of distresse, &c. then this is a rent charge, and if the Grant bee without clause of distresse, then it is a Rent secke. And note that Rent secke *idem est quod redditus siccus*: For that no distresse is incident unto it.

¶ *Eisie de Terre.* (x) Note that a rent cannot be granted out of a Pischary, a Common, an Advowson, or such like incorporeall inheritances, but out of Lands or Tenements wherevnto the Grantee may have recourse to distreyne, or which may be put in view to the recognitors of an Assise, as hath beene said before in this chapter. And though it bee out of Lands or Tenements, (z) yet it must be out of an estate that passeth by the conveyance, (as by all Littletons examples appeareth) and not out of a right: as if the Disseisee release to the Disseisor of Land, reserving a rent, the reservation is voyd, Et sic de similibus.

(x) 32.E.3.tit.scir.fac.108. 40.E.3. Pl.Com.139.

Vide sect.213.

(z) 10.E.4.3.b. 33.H.6.13. 50.E.3.9.8.E.4. 6.5.E.3. Fines 1.9.E.3.7. 46.E.3.27. 21.H.6.8.Tempt.E.I. Ass.42.

¶ *Grant per fait.* * Also a man may have a rent by prescription.

* 19.E.3.Title 30

¶ *Rent secke* idem est quod redditus siccus. This needes no explanation, for Littleton expounds it himselfe.

Sect.

Section 219.

RENT *Charge.* Here it appeareth by Littleton, that this Prima facie is a Rent charge, whereof in this Chapter shall be spoken more at large.

And so it is of a Rent Seeke.

Home grant. Put case that A. be seised of lands in fee, and he and B. grant a rent charge to one in fee, this Prima facie is the grant of A. and the confirmation of B. but yet the Grantee may have a writ of annuity against both.

(a) 16.E.2.tit.Annuity 47. Vide sect.314.

(a) Two men grant an annuity of twenty pounds per annum to another, although the persons be severall, yet he shall have but one Annuity: but if the grant bee, Obligamus nos, & utrumque nostrum; the grantee may have a writ of annuity against either of them, but hee shall have but one satisfaction.

Briefe de annuitie is a writ for the recovery of an annuity.

(b) Doct. & Stud. ca.3. 17.El.Dyer 344.b. 45.E.3.Executor.72.

(b) An annuity is a yearly payment of a certaine summe of money, granted to another in fee for life or yeares, charging the person of the Grantor onely.

(c) 3.E.6. Dyer 65. And Sergeant Bendloes reporteth, That so was the opinion of the Court.

(c) But not only the grantee, but his heire & his and their Grantee also shall have a writ of annuity.

(d) 2.H.4.13. Dyer 17.El.344.b.

(d) But if a Rent charge be granted to a man & his heires, he shall not have a writ of anuity against the heire of the grantor, albeit he hath Assets, unlesse the grant be for him & his heirs.

ITem si home granta per son fait vn rent charge a vn auter, & le rent est arere, le grantee poet eslier sil voet suer vn briefe de Annuitie de ceo enuers l'grantor ou destreyner pur le rent arere, & l'distresse retaine tanque il soit de ceo pay, mes il ne poit faire ne auer ambideux ensemble, &c. Car sil recouer per briefe Dannuity, donques la terre est discharge de le distresse, &c. Et sil ne suist Briefe de Annuitie, mes distreine pur les arrerages, & le Tenant suist son Replegiare, & donques le grantee auowa le prisel de le distresse en le Terre en Court de Record, donques est la terre charge, & la person del grantor discharge d Action d Annuity.

ALso if a man grat by his Deed a Rent charge to another, and the rent is behind, the Grantee may chuse whether he will sue a writ of Annuity for this against the Grantor, or distreine for the rent behinde, and the distresse detaine untill he be payd, but he cannot doe or have both together, &c. For if he recovers by a Writ of Annuity, then the Land is discharged of the distress, &c. And if he doth not sue a writ of Annuity, but distreine for the arrerages, and the Tenant sueth his Replevin, and then the Grantee avow the taking of the distresse in the Land in a Court of Record, then is the land charged, and the person of the Grantor discharged of the Action of Annuity.

Poet eslier. The Grantee hath election to bring a writ of Annuity, and charging the person onely to make it personall, or to distraine upon the Land, and to make it reall.

But if a man grant a rent charge to a man and his heires, and dieth, and his wife bring a writ of Dower against the heire, the heire in barre of her Dower, claimes the same to be an annuity, and no rent charge, yet the wife shall recover her dower, for he cannot determine his election by claime, but by suing of a writ of annuity (as Littleton saith) neither can the heire have after the endowment an annuity for the two parts, for that should not be according to the deed of grant, for either the whole must be a rent charge, or the whole an annuity. But Littleton is to be understood with some limitation: (e) for of a rent granted for ôwelty of partition, a writ of annuity doth not lie, because it is of the nature of the land descended,

(e) 29.Ass.p.23.

ſcended. Alſo of ſuch a rent as may be granted without deed a Writ of annuity doth not lie, though it be granted by Deed.

(f) And here is to be noted, That here is no election given of two ſeverall things, as if the grant were of an annuity, or a Robe yearely, &c. for there the Grantor ha[illegible] day to deliver which he would. But here is two remedies given for one yearely ſumme, and conſequently the Grantee ſhall at any time have election to take which of the remedies hee will, for in all caſes where ſeverall remedies be given, the party to whom the Law giveth the remedies, it giveth him withall election to take which of the remedies he will.

(f) Sir Rowland Heywards caſe li.2.fol.36. 8.E.3.98 41.E.3.10.2. 2.H.4.12.6.H.4.10. 36.H.6.10.9.E.4.46. 21.E.4.55.b.1.E.5 1. F.N.B.121.

¶ *Mes il ne poet faire ou aver ambideux enſemble.* For then he ſhould receiver one thing twice, which ſhould be a double charge to the Grantor.

Note, as to elections, theſe diverſities following:

Lib.2.fol.36,37.in Sir Rowland Heywards caſe.

Firſt, when nothing paſſeth to the feoffee or grantee before election to have the one thing or the other, there the election ought to be made in the life of the parties, & the heire or executor cannot make election. But when [illegible]eſtate or intereſt paſſes immediatly to the Feoffee, Donee, or Grantee, there election may be made by them, or by their heires or Executors.

Secondly, when one & the ſame thing paſſeth to the Donee or Grantee, and the Donee or Grantee hath election in what manner or degree he will take this, there the intereſt paſſeth immediately, and the partie, his heires, or Executors, may make election when they will.

Thirdly, when election is given to ſeverall perſons, there the firſt election made by any of the perſons ſhall ſtand.

Fourthly, In caſe an election be given of two ſeverall things, alwayes he which is the firſt agent, and which ought to doe the firſt act, ſhall have the election: As if a man granteth a rent of twentie ſhillings, or a robe to one and to his heires, the Grantor ſhall have the electiõ, for he is the firſt agent, by payment of the one, or deliverie of the other. So if a man maketh a leaſe, rendring a rent or a robe, the leſſee ſhall have the election cauſa qua ſupra, and with this agree the bookes in the *margent. (g) But if I give unto you one of my horſes in my Stable, there you ſhall have the election, for you ſhall be the firſt agent by taking or ſeiſure of one of them. And if one grant to another twentie loads of Hazill, or twentie loads of Mayle to be taken in his wood of D. there the Grantee ſhall have election, for he ought to doe the firſt act, s. to fell and take the ſame.

*) 9.E.4.36.b.13.E.4.4.b. 1.5.E.4.6.b.11.E.3.annu. 27.11.Aſſ.p.8.29.Aſſ.55. 3.E.3.tit.Aſſ.175. 43.E.3.tit.Barre 194.

(g) 2.H.7.23.a.

Fiftly, when the thing granted is of things annuall, & are to have continuance, there the election remaineth to the Grantor, (in caſe where the law giveth to him election) as well after the day, as before, otherwiſe it is when the things are to be performed unica vice. And therefore if I grant to another for life, an Annuitie or a Robe at the feaſt of Eaſter, and both are behind, the Grantee ought to bring his Writ of annuity in the diſjunctive, for if he bring his Writ of Annuitie for the one onely, & recover, this judgement ſhall determine his election for ever, for he ſhall never have a Writ of annuity afterwards, but a Scire facias upon the ſaid judgement. which reaſon Fitzherbert in his Natura Brevium not obſerving, held an opinion to the contrarie. But if I contract with you to pay unto you twentie ſhillings or a robe at the Feaſt of Eaſter, after the feaſt you may bring an Action of debt for the one or for the other.

B.n.b.15.2.h.

9.E.4.36.13.E.4.4. and the other aboveſaid Bookes.

Sixtly, The Feoffee by his act and wrong may loſe his election, and give the ſame to the Feoffor: As if one infeoffe another of two acres, To have and to hold the one for life, and the other in taile, and he before election maketh a feoffment of both, in this caſe the Feoffor ſhall enter into which of them he will, for the act and wrong of the feoffee.

¶ *Sil recover en Briefe de Annuitie donques eſt la terre diſcharge de diſtreſſe.* Here is to be obſerved, That this determination of the election of the Grantee muſt be by action or ſuit in Court of Record, (h) for albeit the Grantee diſtreine for the Rent, yet he may bring a Writ of Annuitie and diſcharge the land. And Littleton putteth his caſe here ſurely upon a Recoverie in a writ of annuity. (i) But if the Grantee doth bring a Writ of Annuitie, and at the returne thereof appeare and count, this is a determination of his election in Court of Record, albeit he never proceedeth any further. (k) As if a wife be endowed ex aſſenſu patris, and the husband dieth, the wife hath election either to have her Dower at the Common Law, or ex aſſenſu patris, if ſhe bring a writ of dower at the Common Law, and count, albeit ſhe recover not, yet ſhall ſhe never after claime her Dower ex aſſenſu patris.

(h) 17.El.Dyer.344.b.

(i) F.N.B.152.a. 5.H.7.33.b.

(k) 12.E.2.Dower 158.

(l) So if the Grantee bring an Aſſiſe for the rent, & make his plaint, he ſhall never after bring a Writ of Annuitie. But the purchaſing of a Writ of Annuitie, and entrie of it in Court of Record, or of an aſſiſe, is no determination of the election, becauſe an eſtranger may purchaſe a writ in the name of the Grantee, & enter it of record, but if the Grantee appeare thereunto, &c. thẽ this doth amount to a determination of his electiõ, as hath been ſaid.

(l) 10.E.4.17.

Glanvill lib.12.ca.12. Marlbr.ca.21. W.1.ca.16.17.W.2. ca.39.Fleta, lib.2.cap.40.

¶ *Son Replegiare.* Littleton spake immediately before of Un briefe dannuity, but here he saith, Son Replegiare, because goods may be replevied two manner of wayes, viz. by writ, and that is by the Common Law, or by the pleint, and that is by the Statutes for the more speedy having againe of their cattell and goods. A Replegiare lyeth, as Littleton here teacheth us, where goods are distreined and impounded, the owner of the goods may have a writ De Replegiari facias, whereby the Sherife is commanded, taking sureties in that behalfe, to redeliver the goods distreined to the owner, or upon complaint made to the Sherife he ought to make a replevy in the Countrey. Replegiare is compounded of Re, and plegiare, as much as to say, as to redeliver upon pledges or sureties; and in the statute of Marlebridge, Deliberare is used for Replegiare. (m) And the Sherife ought to take two kinde of pledges, one by the Common Law, and they be plegii de prosequendo, and another by the statute, viz. Plegii de retorno habendo. Vide Sect.58. What things may lawfully bee distreyned, whereupon a Replegiare may be sued. The formes of the writ you shall reade in the Register and F.N.B.*

Marlbr.c.21. 21.H.6.Return de Vic.17. (m)W.2.cap.2. Fleta lib.4.cap.5. 4.H.6.15.

* Regist.F.N.B.68.

(n) It is a generall rule that the Plaintife must have the property of the goods in him at the time of the taking. (o) But yet if the goods of a villeine be distrayned, the Lord of the villeine shall have a Replevy, because the bringing of the Replevy amounts to a clayme in Law and vests the property in the Plaintife. But in that case if the goods of the villeine be taken by a trespasse the Lord shall have no replevy, because the villeine had but as right.

(n)3.E.3.74. 6.H.4.2.& 39 9.H.6.39. 20.H.6.19. (o) 33.E.3.Replev.43. 42.E.3.18. 9.H.6.25. F.N.B.69.F. 6.H.7.9. 19.E.3.Repl.32.

(p) But there is two kinde of properties, a generall propertie, which every absolute owner hath, & a speciall propertie, as goods pledged or taken to manure his lands or the like, and of both these a Replegiare doth lye.

(p) 42.E.3.18. 11.H.4.17.23. 47.E.3.12. 48.E.3.20. 7.H.4.17.

And albeit it be provided by the Statute of Marlebridge, cap.22. quod vicecomes post querimoniam inde sibi factam ea fine impedimento vel contradictione ejus qui dicta averia ceperit deliberare possit, &c. (q) yet where the Defendant claimes property, the Sherife cannot proceed, for it is a rule in Law, that property ought to be tryed by writ. And therefore in that case where the tryall is by pleint, the Plaintife may have a writ De proprietate probanda directed to the Sherife to trie the propertie, and if thereupon it be found for the Plaintife, then the Sherife to make deliverance, (for so be the words of the writ) and if for the Defendant, he can no further proceed, but that is but an enquest of office, and therefore if thereby it bee found against the Plaintife, yet he may have a writ of replevy to the Sherife, and if he returne the claime of propertie, &c. yet shall it proceed in the court of common pleas where the propertie shall be put in issue and finally tried. And the Sherife may take a pleint upon the said act out of the County, and make replevin presently, for it should be inconvenient for the owner to forbeare his cattell till the County day.

Marlbr.ca.22.

(q)30.E.3.22. 31.E.3. Replev.35.& 4. 7.H.4.26.28. 31.H.6. Prop.prob.5. 1.E.4.9. 21.E.4.64. 2.Eliz.Dyer. 173. 21.E.4.66.

(r) It is to be noted that a man cannot claime propertie by his Baillife or servant, and the reason is for that if the clayme fall out to be false he shall be fined for his contempt, which the Lord cannot be unless he maketh clayme himselfe, for Nemo punitur pro alieno delicto.

(r) 5.E.3.38. 11.H.4.4. 17.E.2.Prop.prob.6.

In a speciall case a man may have a Replevyn of goods not distreyned, as if the Meine put in his cattell in lieu of the cattell of the tenant paravaile, that he is bound to acquite, he shall have a replevyn of those cattell that never were distreyned.

34.H.6.47.

If a man by his Deed grant a Rent with clause of distresse, and grant further, that hee shall keep the goods distreyned against gages and pledges, untill the Rent be payd, yet shall the Sherife replevy the goods distreyned, for it is against the nature of such a distresse to bee irreplevisable, and by such an intention the currant of replevyns should be overthrowne, to the hindrance of the common wealth, and therefore it was disallowed by the whole Court, and awarded that the Defendant should gage deliverance, or else goe to prison. And Bracton is of the same opinion, for he saith, Eodem modo de via obstructa, per breve quod justiciet propter communem utilitatem, ne transeuntes ire diu impediantur, quia hoc esset commune damnum, & in hos vicecomes & Justiciarii faciant sicut super detentionem averiorum contra vadium plegii, propter communem utilitatem, ne animalia diu inclusa pereant, which in mine opinion is an excellent point of learning.

11.E.3.Gage deliver.5.

Bracton lib.4.fol.233. a.& b.

If the beasts of divers severall men be taken, they cannot joyne in a Repleg. But every one must have a severall replevyn: And so in a Replevin it is a good plea to say that the propertie is to the Plaintife and to a stranger, and where there be two Plaintifes, that the property is to one of them.

28.E.3.92. 3.H.4.12. 34.H.6.37. 2.E.4.23.

There is also a writ De homine replegiando. But Littleton is ready to give you further instruction, therefore heare him.

Regist.fol.133. Bract.fol.121.& 154. W.1.ca.11. Fleta lib.2. ca.2.F.N.B.66.b.

¶ *Et avowa le prise, &c. en court de record.* Here it appeareth that an avowry in Court of record which is in nature of an action, is a determination of his election before any judgement given. And this is a good proofe of that which hath beene formerly said of the writs of Annuity and Assise.

Electio

Electio semel facta & placitum testatum non patietur regressum. 21.H.6.24.per Newton.
Quod semel placuit in electionibus amplius displicere non potest. 27.H.6.4.

If a Rent charge be granted to A. and B. and their heires, A. distreineth the beasts of the Grantor, and he sueth a Replevin, A. avoweth for himselfe, and maketh conusance for B. A. dyeth and B. survyveth, B. shall not have a writ of Annuity, for in that case the election and avowry for the Rent of A. barreth B. of any election to make it an Annuity, albeit he assented not to the avowry.

But here is another diversity to be observed betweene the case aforesaid of the grant of the Rent, where he (as hath beene said) may make it either reall or personall, and when a man may have election to have severall remedies for a thing that is meerly personall or meerly reall from the beginning. As if a man may have an action of account or an action of debt at his pleasure, and he bringeth an action of account and appeare to it, and after is Nonsuite, yet may he have an action of debt afterwards, because both actions charge the person. The like Law is of an Assise and of a writ of entry in the nature of an Assise, and the like. 144. b. 28.E.3.98.b. 27.E.3.89.b.

Sect. 220.

ITem, si home voile q̃ un auter averoit un Rent charge issuant hors de sa terre, mes il ne voile q̃ sa person soit charge en ascun maner p̃ brieve dannuitie, donques il poit aver tiel clause en la fine de son fait. Proviso semper, Quod præsens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam, per breve, vel actionem de annuitate, sed tantummodo ad onerandum terras, & tenementa mea de annuali redditu predict', &c. Donques la terre est charge, & le person del grantor discharge.

ALso if a man would that another should have a Rent charge issuing out of his land, but would not that his person bee charged in any manner by a writ of Annuity, Then he may have such a clause in the end of his deed: provided alwayes, that this present writing nor any thing therein specified shall any way extend to charge my person by a writ or an action of Annuity, but onely to charge my lands and tenements with the yearely rent aforesaid, &c. Then the land is charged and the person of the grantor discharged.

BY this Section it appeareth, that when in a generall grant, the Law doth give two remedies, that the Grantor may provide that the Grantee shall not use one of them and leave the party to the other. But where the Grantee hath but one remedy, there that remedy cannot be barred by any proviso, for such a proviso should bee repugnant to the Grant. 28.H.8.Dier 9.b.

¶ *De annuali redditu, &c.* Here by (&c.) and the consequent of this Section bee implyed divers excellent points of learning, viz. If a man by his Deede granteth a Rent charge out of the Mannour of Dale (wherein the Grantor hath nothing) with such a proviso that it shall not charge his person, albeit the repugnancie doth not appeare in the Deed, yet the proviso taketh away the whole effect of the Grant, and therefore is in judgement of Law repugnant, for upon the matter it is but a grant of an Annuity, provided that it shall not charge his person, for which cause our Author putteth his case of a Rent charge issuing truly out of Land. But if a man by his Deed grant a Rent charge out of Land, provided that it shall not charge the Land, albeit the Grantee hath a double remedy, (as hath beene said) yet the Proviso is repugnant, because the land is expressly charged with the Rent, but the writ of Annuity is but implyed in the Grant, and therefore that may bee restrained without any repugnancie, and sufficient remedy left for the Grantee, for which cause our Author putteth his case of the restraint of bringing a writ of Annuity. And yet in some case where there is a Proviso

So it was resolved by the Justices in 11.H.8.as Justice Spilman reporteth 9.H.6.53.

sup. f. 219.

in the deed that the grantee shall not in any sort charge the person of the Grantor generally, notwithstanding the person of the Grantor shall be charged: As if a man grant a rent charge out of certaine lands to another for life with such a Proviso, the Rent is behinde, the Grantee dyeth, the Executors of the Grantee shall have an action of debt against the Grantor, and charge his person for the arrerages in the life of the Grantee, because the executors have no other remedy against the grantor, for the arrerages, for distreine they cannot, because the estate in the rent is determined, and the Proviso cannot leave the Executors without remedy, as appeareth by that which hath beene said. And therefore our Author putteth his case of a Rent charge continuing. And here is to be observed, that this word (Proviso) hath diuers operations, sometime it worketh a qualification or limitation, and so it is taken here, and often in our bookes: Sometime a Condition, and sometime a Covenant, whereof you shall reade more hereafter, Sect. 329.

6. Eliz. Dier. 229.

¶ *En le fine de son fait.* Here Littleton putteth his case of one Deed, but though the grant be generall, and want such a Proviso, yet may the Grantee by another Deed by way of Defeasance grant that he shall not charge the person of the Grantor, and that if hee bring a writ of Annuity, that the Rent shall cease.

Fr. A. 8. p. 1. Vide Sect. 318.

¶ *Nec aliquid in eo specificatum non aliqualiter se extendat, &c.* Here is to be observed a double negative, Nec and Non, which in Grammaticall construction amounteth to an affirmative, for Negatio destruit negationem, & ambo faciunt affirmativum, yet the Law that principally respecteth substance, doth judge the Proviso to be a negative, according to the intent of the parties, and not according to Grammaticall construction, to the end the Proviso may take effect, and the like you shall finde hereafter in Littleton, * Mala Grammatica non vitiat cartam. Here our Author putteth his case of one Grantor, put then the case, that A. and B. being joyntenants of lands in fee by their Deed grant a Rent charge out of those lands, provided that the Grantee shall not charge the person of A. In this case if the Grantee bringeth a writ of Annuity, he must charge the person of B. onely.

Lib. 3. Cap de condic. Sect. 362.

Section 221.

¶ Que si A. de B. Here wanteth words to precede these, viz. que il grant al A. de B. &c. que si A. de B. &c. as it appeareth in the originall, and so it appeareth in the close of this Section, viz. Mes granta tantsolement que il poet distreyner. And without such a grant the clause should be imperfect.

¶ *Pur ceo que le mannor est charge ove le rent per voy de distresse.* And yet no Rent is expressly granted out of the Mannor. But by the grant that hee shall distraine for such a yearely summe of money in judgement of Law the Mannor is charged with the Rent, but the person of the Grantor cannot be charged, because he expressly granteth no Rent, for that would charge his person, but that the Grantee should distreine, &c. which onely chargeth the Land.

¶ Item, si home fait tiel fait en tiel manner q̃ si A. de B. ne soit annuelmẽt pay al feast de Noel pur terme de sa vie xx. s. de loyall mony, que adonques bien lirroit a m̃ cestuy A. de B. a distreiner pur ceo en le mannor de F. &c. ceo est bone rent charge, pur ceo q̃ le mannor est charge ove le rent per voy de distresse, & unque la person ď celuy que fait tiel fait, est discharge en tiel case de action dannuitie, p̃ ceo que il ne granta per son fait ascun

ALso if one make a Deed in this manner, that if *A.* of *B.* be not yearely payed at the feast of Christmasse for terme of his life xx. s. of lawfull money, that then it shall be lawfull for the said *A.* of *B.* to distreyne for this in the mannor of *F.* &c. this is a good rent charge, because the Mannor is charged with the rent by way of distresse, and yet the person of him which makes such deed is discharged in this case of an action of Annuitie, because he doth

Annuitie

Annuitie a l'dit A. ô B. mes granta tant ſolement, q̃ il poit diſtrainer p̃ tiel Annuitie, &c.

not grant by his Deed any Annuitie to the ſaid *A.* of *B.* but granteth only that he may diſtreine for ſuch Annuitie, &c.

¶ *Que il poet diſtreine pur tiel Annuity, &c.*

Here by (&c.) many points worthy of obſervation are implyed, viz. if a man ſeiſed of Lands in fee bindeth his goods and Lands to the payment of a yearely rent to A. de B. this is a good rent charge with power to diſtreine, albeit there be no expreſſe words of charge, nor to diſtreine. Or in theſe words, Obligo Manerium meum de C. & omnia bona in dicto Manerio exiſtent' A. de B. in annuo reditu de xx.s. ad diſtringend' per Ballivum Domin. Regis pro reditu prædicto. By this grant a rent charge iſſueth out of the Mannor, and where the words be, ad diſtringendum per Ballivum Domini Regis, this is for the advantage of the Grantee. And therefore the Kings Bailly ſhould be but his Miniſter to diſtraine for his rent, & that which he may do by his ſervant, he may do by himſelfe, or by any other of his ſervants. 18.Aſſ.p.1. 18.E.3.32. 3.Aſſ.7. 3.E.3.12. 10.Aſſ.24. 31.Aſſ.p.17. 33.Aſſ.Annuity 52. 16.E.3.grant 64.

If a man by Deed grant a rent of forty ſhillings to another out of his Mannor of Dale, to have and to perceive to him & his heires, and grant over by the ſame Deed, that if the rent be behind, that the Grantee ſhall diſtrain in the Mannor of Dale (be the Mannor of Sale in the ſame County or in another County, and be this grant by one Deed or divers Deeds) the rent is only iſſuing out of the Mannor of D. and it is but a paine, that he ſhall diſtraine in the Mannor of S. but both the Mannors are charged, the one with the rent, & the other with a diſtreſſe for the rent, the one iſſuing out of the land, and the other to be taken upon the land. And whereas our Author puts his caſe of a grant for life: So it is if I grant to you, that you and your heires, or the heires of your body ſhall diſtraine for a rent of forty ſhillings within my Mannor of S. this by conſtruction in Law ſhall amount to a grant of a rent out of my Mannor of S. in Fee ſimple or Fee taile, for if this ſhall not amount to a grant of a rent, the grant ſhall be of little force or effect, if the Grantee ſhall have but a bare diſtreſſe and no rent in him. For then he ſhall never have an Aſſiſe of this, &c. And this is the reaſon, that it is ſo often ruled and reſolved, (*) that this amount to a grant of a rent per conſtruction of Law, Ut res magis valeat, and all this is neceſſarily implyed in the (&c.) and in this caſe the Grantee ſhall not have a Writ of Annuity as our Author ſaith: And whereas our Author putteth his caſe where the diſtreſſe is to be taken in the ſame Land out of which the Rent by conſtruction of Law is iſſuing, hereby is implyed that if a rent be granted, out of the Mannor of D. & the Grantor grant over, that if the rent be behinde, the Grantee ſhall diſtraine for the ſame rent in the Mannor of S. this is but a penalty in the Mannor of S. for three cauſes: Lib.7.fol.2. 24.in Buts his caſe. 51, 52. (*) 3.E.3.12. 3.Aſſ.p.7. 14.Aſſ.p.14. 16.E.3.tit. grants 64. 18.E.3.32. 26.Aſſ.38. 30.Aſſ.12. 46.E.3.18.32. 8.H.4.19. 9.H.6.9. 22.H.6.11.

First, The Law needs not to make conſtruction that this ſhal amount to a grant of a rent, for here a rent is expreſſly granted to be iſſuing out of the Mannor of D. and the parties have expreſſly limited out of what land the rent ſhall iſſue, and upon what land the diſtreſſe ſhall be taken, and the Law will not make an expoſition againſt the expreſſe words and intention of the parties, when this way ſtands with the rule of the Law. Quoties in verbis nulla eſt ambiguitas, ibi nulla expoſitio contra verba expreſſa fienda eſt.

Secondly, if in this caſe this ſhall amount to a grant of a rent out of the Mannor of S. then the Grantor ſhall be twice charged. For if the Grantee bringeth a Writ of Annuity, this ſhall extend onely to the Mannor of D. For upon the grant of a diſtreſſe in the Mannor of S. no Writ of Annuity lyeth, becauſe the Mannor of S. is only charged, and not the perſon of the Grantor as to this; and for this cauſe the bringing of the Writ of Annuity cannot diſcharge the Mannor of S. of any rent: and ſo the Law by conſtruction againſt the words and the intention of the parties ſhall do injury to the Grantor to charge him twice.

Third[illegible] ſuch caſe the Mannor of S. in which the diſtreſſe is onely limited, ſhall be in another County, then it hath beene often adjudged, that the rent ſhall not iſſue out of the ſame, but the diſtreſſe ſhall be as a meane and remedy to compell the Tenant of the Land to pay the Rent. And it was ſaid, that there was no diverſity in reaſon, that the Law in conſtruction ſhall make the rent to be iſſuing out of this, when it lyeth in the ſame County, and not when it lyeth in ſeverall Counties, for the words in both caſes are all one, & there is no reaſon to ſay that he ſhall faile of a recovery by Aſſiſe. And the Bookes in 1.Aſſ.p.10. and 1.E.3.21. and other Bookes doe not ſay that the rent iſſueth in this caſe out of both, but that the land in which the diſtreſſe ſhall be taken is charged: and this is true, for it is charged with the diſtreſſe. And inaſmuch as it was charged with the diſtreſſe, their opinion was that the Tenants of both of them ſhall be named in the Aſſiſe. And the opinion of Finchden in 41.E.3. 13 was affirmed to be good Law, That if the Mannor of D. out of which the rent is granted be recovered by an elder Title, that all the rent is extinct, but if the Mannor of S. in which the diſtreſſe is limited, be evicted, yet all the rent remaines. * So if the Grantee purchaſe parcell of the Mannor of S. the Rent is not extinct, for that the Rent iſſueth onely out of the Man- Vide Bulwars caſe. Lib.7.fol.3. 1.Aſſ.p.10. 1.E.3.21. Vide 9.E.3.13. 31.Aſſ.27. 17.E.4.6. 10.Aſſ.4. 10.E.3.18.2.E.2.Aſſ.360. 1.Aſſ.10. 3.Aſſ.7. 32.H.6. 27. 42.Aſſ.66. 31.Aſſ.27. 29.H.3.Aſſiſe 366. 41.E.3.13.per Finchden. * Vide 17.E.4.6.ſemblable caſe. Vide Sect.prox. ſequen.

noz of D. And it is said that if a man grant a rent out of three acres, & grant over, that if the Rent be behind, that he shall distreine foz the rent in one of the Acres, this rent is entire, and cannot be a rent secke out of two Acres, and a rent charge out of the third Acre, and therfoze it is a Rent secke foz the whole, and yet he shall distraine foz this in the third Acre. So if a Rent be granted to two and to their heires, out of an Acre of Land, and that it shall be lawfull foz one of them and his heires to distreine foz this in the same acre, this is a Rent secke, foz inlomuch as they stand joyntly seised of one entire rent, it cannot be as to the one a Rent secke, and as to the other a rent charge, and this distresse is as an appurtenant to the Rent: and therefoze if he which hath the Rent dieth, the surviuoz shall distreine, & if both grant over the rent to another, he shall distreine foz this. But if a man grant a rent out of Blacke acre to one and to his heires, and grant to him that he may distreine foz this in the same acre foz terme of his life, this is a rent charge foz his life, and a rent secke after, diversis temporibus. Otherwise it is if the distresse be limited foz certaine yeares in the same Land, there this remaines a rent seeke entirely, foz that the fee and the freehold is seek in such case.

Rep.7. fol.51. Bulls case.

If a man seised of Lands in fee, and possessed of a terme foz many yeares, grant a rent out of both foz life, in taile oz in fee, with clause of distresse out of both, this Rent being a Freehold doth issue onely out of the freehold, and the lands in lease are onely charged with a distresse. But if he had granted the rent only out of the lands in lease foz terme of the life of the Grantee, this had issued out of the terme, and the land had beene charged during the terme if the Grantee lived so long.

11.H.6.10.b

If a man be seised of twenty Acres of land, and grant a rent of twenty shillings percipiend de qualibet acra terræ meæ, (that is) out of every one acre of my Land, this is a severall grant out of every severall Acre, and the Grantee shall have twenty pounds in all.

A. doth bargaine and sell land to B. by Indenture, and before inrolment they both grant a Rent charge by Deed to C. and after the Indenture is inrolled some have said, that this rent charge is avoided, foz, say they, it was the grant of A. and by the inrolment it hath relation to the delivery, which (say they) shall avoid the grant, notwithstanding the confirmation of the other which had nothing in the land at that time. But the grant is good, and after the inrolment by the operation of the Statute, it shall be the grant of B. and the confirmation of A. But if the Deed had not beene inrolled, it had beene the grant of A. and the confirmation of B. and so quacunque via data the grant is good.

Section 222.

EXtinct, Commeth of the Verbe Extinguere, to destroy oz put out, and a Rent is said to bee extinguished when it is destroyed and put out.

Apportion. This commeth of the word Portio quasi partio, which signifieth a part of the whole, and Apportion signifieth a Division oz partition of a Rent common, &c. oz a making of it into parts.

(a) Doct. & Stud. lib. 2. cap. 16. 21.H.7.2. 21.E.3.5.

(a) The reason of this extinguishment is because the Rent is entire, and against common right, & issuing out of every part of the Land, and therefoze by purchase of part it is extinct in the whole, and cannot bee (b) apportioned, but by act in Law it may, as hereafter shall be said. (c) If the Grantee of a Rent charge purchase parcell of the Land, and the Grantoz by his deed

(b) 16.Ass.12. 9.Ass.22.

(c) 46.E.3.32. 14.Ass. p.14. 26.Ass.38.

ITem, si home ad un rēt charge a luy & a ses heires issuant hors de certein terr, si il purchase ascun parcel de cel a luy, & a ses heires, tout le rent charge est extinct. & lannuitie auxy, pur ceo que rent charge ne poit per tiel maner estre apportion. Mes si home que aver rent service, purchase parcel de la terre dont le rent est issuant, ceo nextiendra tout, mes pur le parcel, car rent service en tiel cas

ALso if a man hath a Rent charge to him and to his heires issuing out of certaine land, if he purchase any parcell of this to him and to his heires, all the rent charge is ex[tinct], and the Annuitie also, because the Rent charge cannot by such manner be apportioned. But if a man which hath a Rent Service purchase parcell of the land out of which the Rent is issuing, this shall not extinguish all, but for the parcell. For

poit

poit eſtre appoꝛtion ſolonque le value de la terre. Mes ſi un tient ſa terre de ſon Seignioꝛ per le ſerbice de render a ſon Seignioꝛ annuelmēt a tiel feaſt un chival, ou un eſperondoꝛ, ou un Clobe, Gyloſer, & hujuſmodi, ſi en tiel caſ Seignioꝛ purchaſe parcel de la terre, tiel ſerbice eſt ale, pur ceo que tiel ſerbice ne poit eſtre ſeber, ne appoꝛtion.

a Rent Service in ſuch caſe may be apportioned according to the value of the Land. But if one holdeth his land of his Lord by the ſervice to render to his Lord yearely at ſuch a feaſt a horſe, a golden Speare, or a Clove, Gilliflower, and ſuch like, if in this caſe the Lord purchaſe parcell of the Land, ſuch ſervice is taken away, becauſe ſuch ſervice cannot be ſevered nor apportioned.

reciting the ſaid purchaſe of part granteth that hee may diſtreyne foꝛ the ſame rent in the reſidue of the land, this amounteth to a new grant, and the ſame Rent ſhall bee taken foꝛ the like Rent oꝛ the ſame in quantity. And ſo it is (d) if a man by Deed granteth a Rent charge out of his land to a man foꝛ life, and granteth further by the ſame Deed that hee and his heires may diſtreyne in the land foꝛ the ſame Rent, this amounteth to a new grant of a Rent in fee ſimple. (d) 8.H.4.a.9.

But yet a rent charge by the act of the party may in ſome caſe be appoꝛtioned. As if a man hath a Rent charge of 20. ſhillings, he may releaſe to the Tenant of the land 10. ſhillings oꝛ moꝛe oꝛ leſſe, and reſerve part, foꝛ the Gꝛantee dealeth onely with that which is his owne, viz. the Rent, and dealeth not with the Land as in caſe of purchaſe of part. And ſo was it holden in the Common place, Hill.14.Eliz. which I my ſelfe heard and obſerved. So (c) if the Gꝛantee of an Annuity oꝛ Rent charge of 20. pound, grant 10. pound parcell of the ſame Annuity oꝛ rent charge, and the Tenant attoꝛne, hereby the Annuity oꝛ rent charge is divided. Hill.14.Eliz. (c) 9.H.6.12.53. F.N.B.152.D.E.

And (f) when the rent charge is extinguiſhed by his purchaſe of part of the land, hee ſhall never have a Writ of Annuity, becauſe it was by the grant a rent charge, and he hath diſcharged the land of the rent charge by his owne act by purchaſe of part. And therefoꝛe he cannot by Writ of annuity diſcharge the land of the diſtreſſe as Littleton hath befoꝛe ſaid. But if the rent charge be determined by the act of God oꝛ of the Law, yet the Gꝛantee may have a Writ of Annuity. As if tenant foꝛ another mans life by his Deed grant a Rent charge to one foꝛ 21. yeares, Ceſty que vie dieth, the rent charge is determined, and yet the Gꝛantee may have during the yeares a Writ of Annuity foꝛ the arrerages incurred after the death of Ceſty que vie, becauſe the rent charge did determine by the act of God & by the courſe of law, Actus legis nulli facit injuriam. The like Law is if the land out of which the Rent charge is granted be recovered by an elder title, and thereby the Rent charge is voyded, yet the Gꝛantee ſhall have a Writ of Annuity, foꝛ that the Rent charge is avoyded by the courſe of Law, and ſo it was holden in Wards Caſe above remembꝛed againſt an opinion obiter in 9.H.6 42.a. (f) 14.E.4.4. 22.E.4.Le darrein caſe fo. 7.H.5.9.H.6.1.5.H.7.33. Wards caſe cited in L.2. In Heywards caſe fol.36. 9.H.6.42.a.

¶ *Car rent ſervice en tiel caſe poet eſte apportion.* whether this appoꝛtion was at the common Law oꝛ by the foꝛce of the Statute of Quia emptores terrarum, hath beene a queſtion in our bookes. * And it appeareth by Littleton that it was ſo at the Common Law, foꝛ when he citeth any thing pꝛobided by any ſtatute, he citeth the ſtatute, as he hath done this very act befoꝛe. 2. Littleton ſpeaketh here indefinitely of Rent ſervice, and there bee divers kindes of Rent ſervices which are not within that ſtatute, & yet ſuch Rent ſervices are appoꝛtionable by the Common law, as if a man maketh a leaſe foꝛ life oꝛ yeares reſerving a rent, and the Leſſee ſurrender part to the Leſſoꝛ, the Rent ſhall bee appoꝛtioned. So if the Leſſoꝛ recovereth part of the land in an action of waſte, oꝛ entreth foꝛ a foꝛfeiture in part, the Rent ſhall be appoꝛtioned. *Brookes tit. apportionment 28. 18.E.3.49. 22.Aſſ.52. 3.Aſſ.18. 18.E.2.Avowrie 218. Vid.lib.6.fol.1.2.in Bruertons caſe. Vid.lib.8.fol.105,106. in Talbots caſe

(g) So likewiſe if the Leſſoꝛ granteth part of the reverſion to a ſtranger, the Rent ſhall be appoꝛtioned, foꝛ the rent is incident to the reverſion. (h) So it is if Tenant by Knights ſervice by his laſt Will and teſtament in Wꝛiting deviſeth the reverſion of two parts of the lands, the deviſee ſhall habe two parts of the rent. (g) 14.H.8.12. Vid.lib.8.fol.79. in Wildes caſe. Paſch.39.Eliz.Rot.233. So it was adjudged inter Collins & Harding. (h) Trin.43.Eliz.Rot.243. inter Weſt & Laſſels & Hill.42.Eliz.Rot.108.in Communi banco inter Ewer & Moyle.

And theſe caſes are in mine opinion rightly adjudged againſt a ſudden opinion in Hill. 6. & 7.E.6. repoꝛted by Serjeant Bendloe to the contrary. Note what inconvenience ſhould follow if by the ſeverance of the reverſion the Rent ſhould be extinct.

¶ *Purchaſe parcell de la terre.* This is intended of a Fee ſimple foꝛ

for if there be a Lord and Tenant of 40. acres of Land by fealty, and 20. shillings Rent, (i) if the tenant maketh a gift in taile, or a Lease for life or yeares, of parcell thereof to the Lord, in this case the rent shall not be apportioned for any part, but the rent shall be suspended for the whole: for a Rent service (saith Littleton) may be extinct for part, and apportioned for the rest, but a rent service cannot be suspended in part by the act of the partie, & in Esse for other part. So it is if the Lessor enter upon the Lessee for life or yeares into part, and thereof disseise or put out the Lessee, the rent is suspended in the whole, and shal not be apportioned for any part. And where our bookes * speak of an apportionment in case where the Lessor enters upon the Lessee in part, they are to be understood where the lessor enters lawfully, as upon a surrender, forfeiture, or such like, where the rent is lawfully extinct in part. And yet by act in Law a rent service may be suspended in part, and in esse for part. * As when the Gardian in Chivalrie entreth into the Land of his ward within age, now is the Seigniorie suspended: but if the wife of the tenant be endowed of a third part of the Tenancy, now shall she pay to the Lord the third part of the rent. * And so it is if the tenant give a part of the tenancie to the father of the Lord in Taile, the father dieth, and this descends to the Lord, in this case by act in Law the Seigniorie is suspended in part, and in esse for part, and the same Law is of a Rent charge. *v. 149. b.*

Likewise a Seigniory may be suspended in part by the act of a stranger: * As if two Joyntenants or Coparceners be of a Seigniorie, and one of them disseise the Tenant of the land, the other Joyntenant or Coparcener shall distraine for his or her moitie.

Concerning the apportionment of rents, there is a difference between a grant of a Rent, and a reservation of a Rent: for (k) if a man be seised of two acres of land, of one in Fee-simple, and of another in taile, and by his Deed grant a rent out of both in fee, in Taile, for life, &c. and dieth, the land intailed is discharged, and the land in fee simple remains charged with the whole rent, for against his owne grant he shall not take advantage of the weakenesse of his owne estate in part. (l) But if he make a gift in taile, a lease for life or for yeares of both acres, reserving a rent, the Donor or Lessor dieth, the issue in taile avoydeth the gift or lease, the rent shall be apportioned, for seeing the rent is reserved out of and for the whole land, it is reason that when part is evicted by an elder title, that the Donee or Lessee should not be charged with the whole rent, but that it should be apportioned ratably according to the value of the land, as Littleton here saith.

(m) If a man grant a rent charge out of two acres, and after the Grantee recovereth one of the acres against the Grantor by a title paramount, the whole rent shall issue out of the other acre: but if the recovery be by a faint title by Covine, then the rent is extinct for the whole, because he claimeth under the Grantor.

If a man infeoffeth B. of one acre in fee upon condition, & B. being seised of another acre in fee, granteth a rent out of both acres to the feoffor, who entreth into the one acre for the condition broken, the whole rent shall issue out of the other acre, because his title is paramount the grant. But if a man maketh a lease for life of blacke acre and white acre, reserving two shillings rent, upon condition that if the Lessee doth such an act, &c. that then he shal have Fee in blacke acre: the Lessee performes the condition, albeit now by relation he hath the fee simple ab initio, yet shall the rent be apportioned, for that the reversion of one acre whereunto the rent was incident, is gone from the Lessor, and so note a diversity between a rent in grosse, & a rent incident to a reversion, concerning the apportionment thereof. And yet in some cases a rent charge shall not be wholly extinct, where the Grantee claimeth from & under the Grantor. As if B. maketh a lease of one acre for life to A. and A. is seised of another acre in fee, A. granteth a rent charge to B. out of both acres, and doth waste in the acre which he holdeth for life, B. recovereth in waste, the whole rent is not extinct, but shall be apportioned, and yet B. claimeth the one acre under A. And so it is if A. had made a feoffment in fee, and B. had entred for the forfeiture, the rent is to be apportioned, and is not wholly extinct: and the reason hereof is, for that it is a maxime of law, That no man shall take advantage of his owne wrong, Nullus commodum capere potest de injuria sua propria: And therefore seeing the waste & forfeiture were committed by the act and wrong of the Lessee, he shall not take advantage thereof to extinguish the whole rent: and the whole rent cannot issue only out of the other acre, because the Lessor hath the one acre under the estate of the Lessee, and therefore it shall be apportioned. * If the King give two acres of land of equall value to another in fee, fee taile, for life or yeares, reserving a rent of two shillings, and the one acre is evicted by a title paramount, the rent shall be apportioned.

¶ *Mes si un home tient sa terre, &c. per service de render annuelment, &c. un Chival ou un Esperon dor, &c. si en tiel case le Seignior, purchase parcel del terre, tiel service est ale.*

¶ *Chival,*

(i) 32.H.8.tit.Extinguishment.Br.48. 11.Ed.3. Cessavit.21.17.E.3.57.a.

* 21.E.4.29. 9.E.4.1. 7.H.6.16. 4.H.7.6.b. 11.E.3.Cessavit 21.

* 33.E.3.Dower 138.

* 30.Ass.p.12.

* 27.E.3.88.

(k) 12.H.4.17. 17.Ed.2. Dower 164. 30.Ass.p.12.

(l) 20.H.6.3. 9.E.4.1.2. 35.H.8.Dyer 56. 7.E.6. Dyer 82. 9.E.3.6.H.4.17.

(m) Dod. & Stud.l.2.c.17.

* Dyer Mich.7. & 8.Eliz. Manuscript. The Earle of Huntingdons case. Vid.F.N.B.234.b. Briefe de onerando pro rata porc.

¶ *Chival.* Nota, In Latine Destrarius is a great horse, or horse of service, of the French word Destrier. Palfridus a horse to travell on, of the French word Palfray: And Runcinus a Nagge (you shall often read of them in Record) it commeth of the Italian word Roncino. But admit that parcell of the land holden by such entire service come to the Lord by descent, whether shall the entire service wholly remaine, or be extinct? and it is holden that in some case it shall be extinct for the whole, as Suit service, and such other entire annuall Suit services. But if the service be, to render yearely at such a feast a horse, or the like, and the tenant infeoffe the father of the Lord of part, which descends, yet the Feoffor shall hold by a horse, because the service was multiplied, and each of them, viz. the Feoffor and the Feoffee held by a horse.

Anno 6.R.1.Rot.5.War. Bruertons case.lib.6.fo.2. 34.Ass.15.35.H.6.Exec. 21.

A. hath common of pasture sauns nombre, in twenty acres of land, and tenne of those acres descend to A. the Common sauns nombre is entire and uncertaine, and cannot be apportioned, but shall remaine. But if it had beene a Common certaine, (as for ten beasts) in that case the Common should be apportioned. And so it is of Common of Estovers, of Turbarie, of Pischarie, &c. and yet in none of these cases, the descent, which is an act in Law, shall worke any wrong to the Terre tenant, for he shall have that which belongeth to him, for the act in law shall worke no wrong.

v. Rep. 4. fol. 37, 8 in Tyringham's cas.

If three Joyntenants hold by an entire yearely rent, as a horse, or of a graine of wheat, and the tenant cesse by two yeares, and the Lord recover two parts of the land against two of them, and the third saves his part by tendring of the rent, &c. and finding suretie, albeit the Lord come to the two parts by lawfull recovery, grounded upon the default and wrong of the two Joyntenants, yet shall the entire annuall rent be extinct.

F.N.B.209.40.E.3.4.

If the tenant holdeth by fealty and a bushell of wheat, or a pound of Comyn or of Pepper, or such like, and the Lord purchaseth part of the Land, there shall be an apportionment, as well as if the rent were in money: and yet if the rent were by one graine of wheat, or one seed of Comyn, or one Pepper corne, by the purchase of part, the whole should be extinct. But if an entire service be pro bono publico, as Knights service, Castle gard, Cornage, &c. for the defence of the Realme, or to repaire a bridge or a way, to keepe a Beacon, or to keepe the Kings Records, or for advancement of justice and peace, as to ayd the Sheriffe, or to be Constable of England, though the Lord purchase part, the service remaines. So it is if the tenure be pro opere devotionis sive pietatis, as to finde a Preacher, or to provide the ornaments of such a Church: or pro opere charitatis, as to marry a poore Virgin, or to binde a poore boy Apprentice, or to feed a poore man. And so note a diversity betweene these cases, and entire services for the private benefit of the Lord.

Vid.Litt.Cap.Tenant in Common 71.b. Lib.6.f.1.2.in Bruertons case. Lit.f.49.11.H.7.12.b. 24.H.8.Tenures 53. Brooks. 35.H.6.6.11.El.Dy.285. 16.E.3.Avowrie 93.

Sabeths case. Rep. 8. fo: 105

Sect. 223.

¶ MEs si un hõe tient sa terre dun auter, per Homage, Fealtie, & Escuage, & per certaine rent, si le Sñr purchase parcell de la tt, &c. en tiel cas l tent ẽra apportion, come est avantdit, mes uncore en cest case l homage & fealty ẽmurront entier a le Sñr, car le Seignior avera le homage & fealtie de son tenant pur le remnant de les

BUt if a man hold his land of another by homage, fealty, and Escuage, and certaine Rent, if the Lord purchase part of the Land &c. in this case the rent shall be apportioned, (as is aforesaid) but yet in this case the Homage and Fealty abide entire to the Lord: For the Lord shall have the homage and Fealty of his Tenant for the rest of the Lands and Tenements

¶ *Purchase parcel del ter', &c.* here by this &c. is implyed, that the reasons wherefore homage & fealtie remain and are not extinct in this case, are, first, because it can be no losse to the tenant, as it might in the case of an horse or other entire service, for there it may bee the remnant is not sufficient in value to pay it. Secondly, there is no land but it must be holden by some service or other, and homage & fealty are the freest & least chargeable services to the Tenant.

Bruertons case ubi supra

5.E.2.Avowrie 206.

¶ *Pur ceo que tiel services ne sont passe annual services, &c.* This is Ratio una, but non unica, as it appeareth by that which hath

hath beene ſaid. If there be Lord and Tenant by Fealtie and Herriot ſervice, and the Lord purchaſe part of the land, the Herriot ſervice is extinct, (and yet it is not annuall, but to bee paid at the death of the tenant) becauſe it is entire and valuable.

Bruertons Caſe lib.6. Talbots caſe lib.8.fo.104. Fol.111.

terres & tenemẽts tenus de luy, come il avoit adevant, pur ceo que tiels ſervices ne ſont paſſe annuals ſervices, et ne poyent eſtre appoꝛtion, mes leſcuage poit, & ſerra appoꝛtion ſolonque lafferance et rate de la terre, &c.

holden of him, as he had before, becauſe that ſuch ſervices are no yearely ſervices, and cannot be apportioned, but the Eſcuage may and ſhall be apportioned according to the quantitie and rate of the land, &c.

¶ *Solonque laſſerance & rate de la terre, &c.* Here is by this (&c.) implyed, That in ſome caſe where it is entire and valuable and not annuall, it ſhall not (as hath beene ſayd) be extinguiſhed by purchaſe of part, (*) as Knights ſervice which is to be perfoꝛmed by the body of a man, if the Lord purchaſe part, yet the tenure by knights ſervice remaines foꝛ the reſidue, Quia pro bono publico, & pro defenſione regni, but the Eſcuage ſhall be appoꝛtioned, as here Littleton ſaith, becauſe that is foꝛ the benefit of the Lord, and yet it is caſuall and not annuall. And where our Authoꝛ ſpeaketh of Services, it is implied, that a Herriot cuſtome, though it be entire, valuable, and not annuall, by the purchaſe of part ſhall not be extinct. On the other part, when the tenure is by an entire ſervice, and the tenant alien part of the tenancie, in what caſes the rent ſhall be multiplyed (that is) where the Feoffoꝛ and the Alienee ſhall pay the entire rent ſeverally, (foꝛ regularly it holdeth, that quæ in partes dividi nequeunt, ſolida à ſingulis præſtantur) and where not, you may read at large in my *Reports.

(*) 7.E.3.29. Talbots caſe. lib.8.fol.104.

(*) Bruertons caſe lib.6. fol.1.2. Talbots caſe lib.8. fol.104.

And by this (&c.) is alſo implyed, that the appoꝛtionment ſhall not be accoꝛding to the quantity of the land, but accoꝛding to the quality oꝛ value thereof, as by that which hath beene ſaid appeareth.

Sect. 224.

5.E.2.Avowrie 208. 21.E.3.58.b.34.Aſſ.15. Tit.Apportionment.b.28. 9.Aſſ.22.

¶ NOte here a diverſity, when the grantee of a Rent charge commeth to a part of the land charged by his owne act, and when by the courſe of Law.

¶ Item, ſi home ad un rẽt charge & ſon pier purchaſe parcel de les Tenements charges en fee, & moꝛuſt, & cel parcel deſcend a ſon fits, q̃ ad l' rẽt charge, oꝛe cel charge ſꝛt appoꝛtion ſolonque le value de la tẽ come en avant dit ô Rent ſervice, pur ceo que tiel poꝛtion de la terre purchaſe per la piere, ne vient al fits per ſõ fait demeſne, mes per diſcent & p courſe del Ley.

Alſo, if a man hath a rent charge, and his father purchaſe parcell of the Tenements charged in fee, and dieth, and this parcel deſcends to his ſon, who hath the rent charge, now this charge ſhall be apportioned accoꝛding to the value of the land, as is aforeſaid of rent ſervice, becauſe ſuch portion of the Land purchaſed by the Father, commeth not to the ſonne by his owne fact, but by deſcent and by courſe of law.

10.Aſſ.Pl.12.

v. 145. b.

14.H.6.41.b.

¶ *Purchaſe parcel de les Tenements charges en fee.* And ſo it is if the tenant giveth to the father of the Grantee part of the land in Taile, and this deſcend to the Grantee, the rent ſhall be appoꝛtioned, and ſo by act in law a Rent charge may bee ſuſpended foꝛ one part, and in eſſe foꝛ another.

And ſo it is, if the father be grantee of a rent, and the ſon purchaſe part of the land charged, and the father dieth, after whoſe death the rent deſcends to the ſon, the rent ſhall be appoꝛtioned, and ſo it is if the Grantee grant the rent to the tenant of the land, and to a ſtranger, the rent is extinct for a moitie.

If a man hath issue two daughters, and grant a rent charge out of his land to one of them, and dieth, the Rent shall be apportioned, and if the grantee in this case infeoffeth another of her part of the land, yet the moity of the rent remaineth issuing out of her sisters part, because the part of the Grantee in the land by the descent was discharged of the Rent. But in all these cases where the Rent charge is apportioned by act in Law, yet the writ of Annuity faileth, for if the Grantee should bring a writ of Annuity, he must ground it upon the grant by Deed, and then must he as it hath beene said bring it for the whole. 9.Ass.22.

Annua nec debitum Judex non separat ipsum. 5.R.2.Annuity 21.

Also in respect of the realty the Rent is apportioned, but the personalty is indivisible, and by act in Law shall not be divided. If Execution be sued of body and lands upon a statute Merchant or Staple, and after the inheritance of part of those lands descend to the Conusee, all the execution is avoyded, for the duty is personall and cannot be divided by act in Law. Pl.Com.72. 35.H.6.tit.Execut.31. 15.E.4.5. vid 2.R.3.470 M.5.

¶ *Ne vient al fitz per son fait demesne mes per discent & per course del ley.*

If the father within age purchase part of the land charged, and alieneth within age and dyeth, the sonne recovereth in a writ of Dum fuit infra ætatem, or entreth: In this case the act of Law is mixt with the act of the party, and yet the rent shall be apportioned, for after the recovery or entry the son hath the land by descent.

So it is in case the son recovereth part of the land upon an alienation by his father Dum non fuit compos mentis, the Rent shall be apportioned for the cause aforesaid.

If man seised of lands in a fee taketh wife, & maketh a Feoffment in fee, the Feoffee grants a Rent charge of x. pound out of the land to the Feoffor and his wife, and to the heires of the husband, the husband dyeth, the wife recovereth the moity for her Dower by the custome, the Rent charge shall be apportioned, and she may distreine for five pound which is the moity of the rent. In which case two notable things are to be observed. First, albeit the Dower be by relation or fiction of Law above the rent, yet when the wife recovereth her Dower, she shall not have her entire rent out of the residue, for a relation or fiction of Law shall never worke a wrong or charge to a third person, but In fictione Juris semper est æquitas. Secondly, that albeit her owne act doe concurre with the act in Law, yet the rent shall be apportioned, 5.E.2.Avowry 208. Lib.3.fol.29.in Burley and Bakers case.

Sect. 225.

¶ Item, si soit sñr & tenant, & le tenãt tient de ſ̃ Seignior per fealty & certaine rent, & le Sñr grant le rent p ſ̃ fait a un auter, &c. reservant a luy le fealty, & le tenant atturna al grantee de ł rent, ore tiel rent est rent seck a le grantee, pur ceo que les tenements ne sont tenus del grantor de le rent, mes sont tenus del Seignior que reserve a luy fealty.

ALso if there be Lord and tenant, and the tenant holds of his Lord by fealtie and certaine rent, and the Lord grants the rent by his deed to another reserving the fealty to himselfe, and the tenant atturnes to the grantee of the rent, now this rent is rent seck to the grantee, because the tenements are not holden of the grantor of the rent, but are holden of the Lord who reserved to him the fealty.

¶ *Et le Seignior grãta le Rent, &c.*

So it is if the Lord releases the Rent to the Tenant saving the fealty, the Rent is extinct. But if there be Lord and Tenant by Fealty and Rent, and the Lord by his Deed reciting the tenure release all his right in the land saving his said Rent, the Seigniory remaines, and he shall have the Rent as a rent Service, and the fealty incident to it, for the said Rent is as much to say as the rent Service whereunto fealty is incident. 12.E.4.11. 9.E.3.1. 40.E.3.22.b. 13.E.3.tit.Release 36.

And if the Lord hath issue two daughters and dieth, and upon partition the fealtie is allotted to the one and the Rent to the other, she shall have the Rent as a Rent seeke. 17.E.3.72.b.

If there be Lord of a manor and Tenant by fealty, 17.E.3.72.b.

Suit of Court and Rent, the Lord grant the fealty saving to him the suit of Court and Rent, the saving is good for the Rent, but not for the suit to Court, because the Grantee

tee can keep no Court, and there is no tenure of the Grantor, and therefore the suit of Court is lost and perished in that case.

If the Donee hold of the Donor by fealty and certaine Rent, and the Donor grant the services to another, and the Tenant attorne, some have said the Rent shall not passe because the Rent cannot passe but as a Rent service being granted by the name of services, and the fealty cannot passe because (as hath beene said) the fealty is an incident inseparable to the reversion. But it seemeth that the Rent shall passe as a Rent secke, because at the time of the grant it was a Rent service in the Grantor, and therefore there be words sufficient to passe it to the Grantee, and it is not of necessity that it shall be a rent service in the hands of the Grantee.

If there be Lord and Tenant by fealty and certaine rent, and the Lord by deed grant the rent in fee saving the fealty, and grant further by the same Deed that the Grantee may distreine for the same rent in the tenancy, albeit a Distresse were incident to the rent in the hands of the Grantor, and although a Tenant attorne to the grant, yet cannot the Grantee distreine, for the Distresse remaines as an incident inseparable to the Seigniory, for then the Tenant should be subject to two severall distresses of two severall men. And so it is if the Lord in that case grant the Rent in tayle or for life, saving the fealty, and further grant that the Grantee may distreine for it, albeit the reversion of the rent be a Rent service, yet the donee or grantee shall have it but as a rent secke, and shall not distreine for it.

It is to bee observed that where a Rent service is become a rent secke by severance of the same from the Seigniory that now the nature of the rent is changed, for if the Grantee purchase part of the land the whole rent shall be extinct. And whereas in an Assise for a Rent service, all the tenants of the land need not to be named, but such as did the disseisin: Yet in Assise for the Rent seck which sometimes was a rent service, all the tenants must be named, as in case of a rent charge, albeit he were disseised but by one sole tenant, * but if the Lord of a Mannor release the fealty to his Tenant saving the rent, or that a Mesnalty become a rent by surplusage, those that are now Secke (and sometimes were service) are part of the Mannor, but a Rent charge cannot be part of a Mannor.

Attorne, &c. Of Attornement shall be hereafter said in his proper Chapter and place.

7.E.3.2.b.Fitz.Warrens case.

7.E.3.2.3.Adjudged.

31.Ass.31.19.Ass.10. 32.Ass.pl.10.F.N.B. 178.D. 22.H.6.3.b.4.E.2. Ass.449.28.H.8.Dier 31.

(*) 31.Ass.23.22.Ass.53.

Sect. 226.

SIle Seignior voet granter per son fait le homage, &c. It is to be observed that where the Seigniory is by homage, fealty and rent, (a) if the Lord grant away the homage, the Fealty shall passe, for fealty is an incident inseparable to homage (b) & cannot by any saving in any grãt be separated frõ it, for homage cannot be sole or alone, but the rent (though it be not saved) shall not passe in that case, because the rent is not incident to homage: and so it is if there be Lord and Tenant by fealty and rent, & the Lord grant over the fealty without any savings, the rent passeth not, but fealty hath an incident inseparable belonging to it, which by no saving can bee separated, and that is a Distresse, for as Littleton saith here, a service cannot be secke (that is) without some

(a) 40.E.3.22. per Curiã.

(b) 44.E.3.19,20. 39.H.6.25.29.Ass.pl.20. 16.Ass.p.38.

ENmelm̃ le mãner est lou hõe tient la terre per homage, fealtie, & certaine rent, si le Sñr grant la rent, savant a luy le homage, tiel rent apres tiel grant est rent secke. Mes la ou terres sont tenus per homage, fealty, & certeine rent, si le Sñr voit granter per s̃ fait le homage de son tenãt a un auter savant a luy le remnant de les services, & le tenant atturna a luy, solonq̃ le forme del graunt, en cest case le tenant

IN the same manner, where a man holds his land by homage, fealty and certaine rent, if the Lord grant the rent, saving to him the homage, such rent after such grant is rent seck. But there where lands are holden by homage, fealty, and certaine rent, if the Lord will grant by his deed the homage of his tenant to another, saving to him the remnant of his services, and the tenant attorne to him according to the forme of the grant, in this case

tiendra

tiendra la terre del grantee, & le Sñr q̃ grantast le homage, navera forsq̃ le rent come rent secke, & ne unques distreyneta pur le rent, pur ceo que homage ne fealtie, ne escuage, ne poit estre dit seck, car nul tiel service poit estre dit seck. Car celuy que ad ou doit aver homage, ou fealty, ou escuage de la terre poit per common droit distreyner pur ceo sil soit adeterre, car homage, fealtie, & escuage sont services, per queux terres ou tenements sont tenus, &c. & sont tiels q̃ en nul maner poiẽt estr̃ pris̃ forsque come services, &c.

the tenant shall hold his land of the grantee, and the Lord who granted the Homage shal have but the rẽt as a Rent seck, & shall never distrain for the rẽt because that homage nor fealty, nor escuage cannot bee said secke, for no such service may be said secke. For hee which hath or ought to have homage, fealty, or escuage of his land may by common right distreine for it, if it bee behind. For homage, Fealty, and Escuage are Services by which Lands or Tenements are holden, &c. and are such services as in no manner can bee taken but as Services, &c.

distresse belonging to it, for then it were not a service, and so of Homage and Escuage.

¶ *Terres ou tenements sont tenus, &c.* By this (&c.) and out of this Section it may be collected, that if (c) there be Lord and Tenant by Fealty and rent, the Annuall rent which is a profitable Service, is of higher & more respect in law than the Fealty, and therefore by the grant of the rent the Fealty shall passe as an incident thereunto, but it is an incident separable, and therefore may be by a saving as Littleton hath said, separated from it. And so when the tenure is by Fealty and rent, and the rent be recovered, the fealty shall includedly bee recovered. (d) And where the tenure is by Homage, Fealty and rent, by the recovery of the rent with the appurtenances upon a former right, the homage and fealty also shall be restored by necessity and indulgence of the law, for seeing the law giveth no Præcipe for the homage and Fealty, but for the rent only, reason would that by the recovery of the rent, the whole entire Seigniory shall be inclusively restored in that case. But if the recovery be without title, there the rent is recovered as a rent seck, for that worketh no more than a grant, (*) but by the recovery of a Manor, whether it be by title or without title, homage, fealty, and all other Services parcell of the Manor are recovered. And albeit Fealty cannot be divided from Homage by grant (as hath beene sayd) yet by extinguishment it may: (e) as if there be Lord and Tenant by Homage, Fealty and Rent, and the Lord release the Seigniory and Services, or all his right in the Land saving the Fealty and Rent, or saving the said Rent, or if he by expresse words release the Homage saving the Fealty and Rent, there the Fealty and Rent remain, for the Homage is extinct. And so note a diversity betweene a grant and a Release in that case. But so long as Homage continues the Fealty cannot be divided from it.

(c) 44.E.3.19. 26.Ass.38. 29.Ass.p.20. 9.E.3.2. 39.H.6.24.25. 27.H.8.20. 8.E.4.28.

v. 152. a.

v. 142. a.

(d) Tempt H.8.Br. tit. incidents 24. 44.E.3.19. 29.Ass.20. 39.H.6.24.25.

(*) Vide Sect.149.

(e) 9.E.3.1.

¶ *Forsque come services, &c.* Here is implyed a diversity between these corporall services of Homage, Fealty, and Escuage, which cannot become seck or dry, but make tenure whereunto Distresses, Escheats, and other profits be incident, and other corporall services, as to plough, repaire, attend, and the like, and all Rents whatsoever, for they may become seck or dry and make no tenure.

Sect. 227.

Mes auterm̃et est ỏ rent que fuit un foits rent service, pur ceo que quãt

But otherwise it is of a Rent which was once Rent Service, because when it is severed

¶ *Et le Seignior ne poet grant tiel rent ove distres, come est dit.* (f) For the

(f) 7.E.3.2.3.

the diſtreſſe is an incident inſeparable to the fealty as hath been ſayd (g) and therefore a releaſe of diſtreſſe is voyd.

(g) 7.E.4.11.

3.H.7.4.5.

¶ *Incident.* Incidens a thing appertaining to or following another as a more worthy or principall, whereof you ſee here, and in divers other places of Littletons examples. And of incidents ſome be ſeparable and ſome inſeparable, as hath beene ſayd.

il eſt ſever per le grant le Seignior de les auters ſervices, il ne poit eſtre dit rent Service, pur ceo que il ne ad a ceo fealty, que eſt incident a chescun manner de rent ſervice, & pur ẽ eſt dit rent ſecke, ſi le ſeignior ne poit grant tiel rent ove diſtreſſe, come eſt dit.

by the grant of the Lord from the other ſervices, it cannot bee ſaid Rent Service, for that it hath not fealty unto it, which is incident to every manner of rent Service, and therefore it is called rent ſeck. And the Lord cannot grant ſuch a rent with a diſtreſſe, as it is ſaid.

Sect. 228.

¶ *Savant a luy le reverſion, &c.* By this word (&c.) is to be obſerved (h) that this rent reſerved is a Rent Service, and hath fealty incident to it, and both rent and fealty are incident to the reverſion, viz. (i) the rent incident to the Reverſion ſeparably, but the fealty incident to the Reverſion inſeparably, but by the grant of the Rent, the fealty in this caſe ſhall not paſſe, becauſe the fealty is inſeparably incident to the reverſion, but the Grantee ſhal have the rent as a rent ſecke. Alſo by this (&c.) is implyed an attornement of the tenant, for without that, although by the grant the Rent is turned to a rent ſecke, ſo as the Tenant cannot be charged with any diſtreſſe, yet to the paſſing thereof there muſt bee an attornment.

(h) 41.E.3.16.

(i) 12.E.4.3. 32.H.8.tit. Patents Br.26.Aſſ.66. 48.E.3.9.b. Doct.& Studi.2.ca.9.

¶ *Attorne, &c.* Here is implyed by this (&c.) an attornment in the life of the Grantee, and other incidents to an attornment, whereof you ſhall reade at large in the Chapter of Attornment.

CItem ſi hõe leſſa a un auter terr̃s pur terme de vie, reſervant a luy certain rent, ſil grant le rent a un auter p̃ſon fait, ſavant a luy le reverſion de la terre iſſint leſſe, &c. tiel rent eſt forſque rent ſecke pur ceo que l'grantee nad riens en le reverſion del terre, &c. Mes ſil grant le reverſion del terre a un auter pur terme de vie, & le tenant atturne, &c. donques ad le grantee le rent come rent ſervice, pur ceo que il ad le reverſion pur terme de vie.

ALſo if a man let to another lands for terme of life reſerving to him certaine rent, if he grant the rent to another by his Deed ſaving to him the Reverſion of the land ſo letten, &c. ſuch rent is but a rent ſeck becauſe that the grãtee had nothing in the Reverſion of the land, &c. but if he grant the reverſion of the lãd to another for terme of life, and the tenant attorne, &c. then hath the grantee the Rent as a Rent ſervice, for that he hath the reverſion for terme of life.

¶ *Donques ad le grantee le rent come rent ſervice pur ceo que il ad le reverſion pur terme de vie.* And the reaſon hereof is, becauſe the Rent is incident to the Reverſion, as hath beene ſaid, and (as Littleton ſaith here) paſſeth away by the grant of the Reverſion, as with the Superior without ſaying Cum pertinentiis, &c. for the reverſion cannot be ſecke: But by the grant of the Rent the reverſion doth not paſſe.

Sect.

Sect. 229.

¶ Et issint est a entendue que si home dona terrez ou tenements en le taile, rendant a luy & a ses heires certaine Rent, ou lessa terre pur terme de vie, rendant certaine rent, sil granta le reversion a un auter &c. & le tenant atturna, tout le rent & service passe per cest parol (reversion) pur ceo que tiel rent & service en tiel cas sont incidents a le reversion, & passont per le grant de le reversion. Mes coment que il granta le rent a un auter, le reversion ne passa my per tiel grant, &c.

AND so it is to be intended, that if a man give Lands or Tenements in taile, yeelding to him and to his heires a certaine rent, or letteth Land for terme of life rendring a certaine rent, if he grant the Reversion to another, &c. and the Tenant atturne, all the Rent and Service passe by this word (Reversion) because that such rent and Service in such case are incident to the reversion, and passe by the grant of the reversion. But albeit that he grāteth the rent to another, the Reversion doth not passe by such grant, &c.

¶ This needs no explication, but is evident by that which formerly hath beene said, saving by this (&c.) in the end is implyed the old rule, That the incident shall passe by the grant of the principall, but not the principall by the grant of the incident, Accessorium non ducit, sed sequitur suum principale.

Sect. 230.

¶ Et issint nota le diversitie. Et issint est tenus, P. 21. E. 4. Mes il est adjudge, An. 26. lib. Assisarum, ou les services del tenant en taile fueront grants, q̄ ē fuit bone grant, nient obstant que le reversion demurt. ¶

SO note the diversity. And so it is holden, *P. 21. E. 4.* But it is adjudged 26. of the book of Assises, where the services of Tenant in taile were granted, that this was a good grant, notwithstanding that the Reversion remaine. ¶

¶ This is added to Littleton. And therefore as I have done heretofore, and shall doe hereafter in like cases, I passe it over. And the case here cited in 26. Ass. p. 66. was contra opinionem multorum, and afterwards that Judgement was reversed by writ of Error, for that the Services remained with the Reversion as incidents inseparable.

Sect. 231.

¶ Item si soit seignior, mesne, & tenant, & le tenant tient del mesne per service de v. s. & le mesne tient ouster per service

ALSO if there bee Lord, mesne and tenant, and the tenant holdeth of the mesne by the service of five shillings, and the mesne

¶ Si soit Seignior, mesne & tenant &c. si le Seignior Paramont purchase le Seigniorie en fee. &c.

(k) Some have said that

(k) 19. E. 3. ayowries 246.

2. E. 2. tit. Exting. 6. 26. H. 6. ibid. 7.

in this case it were reason, that by the purchase of the Lord paramount, his Seigniory should be onely extinct, and that he should become tenant to the Mesne, and the Mesne to hold over as the Lord paramount held. But that cannot bee, for that one man cannot be both Lord and tenant, nor one land immediatly holden of divers lords.

8) 7. Ass. 2. 7. E. 3. 20.

(l) If the Tenant infeoffe the Lord paramount and his wife and their heires, in this case the Mesnalty is but suspended, for if the wife survive, both Mesnalty & seigniory are revived.

It is said that if there bee Lord, Mesne and Tenant, each of them by Fealty and fixe pence, the Lord confirme the state of the Tenant, to hold of him by Fealty and three pence, that the mesnalty is extinct. (m) And so in the same case, if the Tenant bee an Abbot, and the Lord confirme his estate to hold of him in Frankalmoigne, the mesnalty is extinct. (n) So it is if the Lord release to the tenant, for whether the Lord purchase the tenancie, or the Tenant the Seigniory, the mesnalty is extinct. And albeit the Mesne grant the Mesnalty for life, and then the Lord release to the Tenant, both the reversion & the estate for life are drowned. (o) So if there bee Lord & tenant, and the tenant make a gift in taile, the remainder to the King, the Seigniory is extinct.

(m) 4. E. 3. 19. See for this hereafter in the chapter of Confirmation, Sect.

(n) 8. H. 6. 24.

(o) 4. & 5. P. & M. Dy. 154.

de xii. d. si le Seignior paramount purchase le tenancie en fee, donques le service de le mesnaltie est extinct, pur ceo q̄ quant le Seignior paramount ad le tenancie, il tient de son Seignior procheine paramount a luy, & sil doit tener ceo de luy que fuit mesne, donques il tiendra un mesme tenancie immediate de divers Seigniors, per divers services, q̄ serroit inconvenient, & la ley voit plus toft suffer un mischiefe q̄ un inconvenience, & pur ceo le Seigniory del mesnaltie est extinct.

holdeth over by the service of 12. pence, if the Lord Paramont purchase the tenancie in fee, then the service of the mesnalty is extinct, because that when the Lord Paramont hath the tenancie, he holdeth of his Lord next Paramont to him, & if he should hold this of him which was Mesne, then he should hold the same tenancie immediately of divers Lords by divers Services, which should be inconvenient, and the Law will sooner suffer a mischiefe than an inconvenience, & therefore the Seigniory of the Mesnalty is extinct.

Vide Sect. 138, 139.

¶ *Que serra inconvenient.* Here it appeareth, That Argumentum ab inconvenienti is forcible in Law, as hath been said before, and shall be often observed hereafter.

(p) 13. H. 4. 3. 40. Ass. p. 27. 22. R. 2. Vouch. 81.

¶ (p) *Le ley voet pluis toft suffer mischiefe que inconvenience.* Lex cuius tolerare vult privatum damnum, quam publicum malum. Here be two Maximes of the Common Law:

First, That no man can hold one and the same land immediately of two severall Lords.

Secondly, That one man cannot of the same land be both Lord and tenant. And it is to be observed, that it is holden for an inconvenience, that any of the maximes of the law should be broken, though a private man suffer losse: for that by infringing of a Maxime, not onely a generall prejudice to many, but in the end a publike incertainty and confusion to all would follow. And the rule of law is regularly true, Res inter alios acta alteri nocere non debet. Et factum unius alteri nocere non debet, which are true with this exception, unlesse an inconvenience should follow, as our Author here teacheth us.

Sect. 232.

¶ *Item arrera le iiii. s. come rent Secke.*

¶ Mes entant q̄ le tenant te-

But in as much as the Tenant holds this

nust del mesne p̄ v. s. & le mesn̄ tenust forsque per xii. d. issint que il avoit pluis en advantage per iiii. s. que il payast a son Seignior, il avera les dits iiii. s. come Rent Secke annuelment de le Seignior que purchase le Tenancie.

of the Mesne by five shillings, and the Mesne hold but by twelve pence, so as he hath more in advantage by foure shillings, than he payes to his Lord, he shall have the said foure shillings as a rent Secke yearely of the Lord which purchased the tenancie.

And yet he shall distreyne for it, for seeing the fealtie is extinct, the Law reserves the distresse to the rent, for, as it hath been said in the like case, seeing the fealtie is extinct, the distresse by act in Law may be preserved, Quia quando lex aliquid alicui concedit, concedere videtur & id sine quo res ipsa esse non potest (r) And therfore if a man maketh a lease for life, reserving a rent, & bind himselfe in a statute, and hath the rent extended and delivered to him, he shall distreyn for the rent because hee commeth to it by course of Law. (r) 13.H.4.Avowrie 237.

(s) But if a Rent service be made a rent secke by the grant of the Lord, the Grantee shall not distreyne for it, for that the distresse remaines with the fealtie. (t) If there be Lord mesne and tenant, & the mesnaltie is a mannor having divers freeholders, and the Lord purchase one of the Tenancies, and there is a rent by surplusage, this rent albet it be changed into another nature, (as hath beene said) is parcell of the Mannor. But yet by purchase of part of the land, the whole rent is extinct, albeit the Law did preserve it. (s) 28.E.3.93. (t) 31.Ass.23. 22.Ass.53. 2.H.6.14. fr. 150. b.

Sect. 233.

¶ Item si home q̄ ad Rent Secke est un foits seisie dascun parcel de le Rent apres l'Tenant ne voit payer l'rent a derere, ceo est son remedie, il covient de aler per luy ou per autes, a les terres ou tenements dont l'rent est issuant, & la demaund les arerages del rent, & si le Tenant denia ceo de payer, cest denier est un disseisin d le rent. Auxy si le tenant ne soit adonqs prist a payer, ceo ē un denier que est un disseisin de rent. Auxy si l'Tenant ne nul auter home soit demurant, sur les terres

Also if a man which hath a Rent secke be once seised of any parcell of the rent, and after the Tenant will not pay the rent behind, this is his remedie, he ought to goe by himselfe or by others, to the lands or Tenements, out of which the rent is issuing, and there demand the arerages of the rent, & if the tenant denie to pay it, this deniall is a disseisin of the rent. Also if the Tenant nor any other man bee remai-

¶ *Seisin*, or Seison, is common aswell to the English as to the French, & signifies in the Common Law possession, whereof seisina a Latine word is made, and seisire a Verbe.

¶ *Dascun parcel.* (u) A seisin of parcel, is a sufficient seisin in Law, to have an Assise of the whole rent. (u) 5.E.4.2.

Concerning the generall learning of seisins, you may reade Lib.4. Bevils case, fol. 8. lib.5. fol. 98. lib.6. fol.57. lib.7. fol.24.29. lib 9. fol. 33. and many authorities of Law there cited, but sufficient is said here to explane Littleton. T.18.E.1.coram Rege Nott in Thesaur.

¶ *A les Terres, &c.* (w) For a demand of the tenant out of the land is not sufficient: but if there be a house and land, a demand on the land is sufficient, but for a condition broken, it ought to be at the house, as hath beene said before. (w) 49.E.3.14.b. 14.h.4.4.Pl.Com 71.

¶ *Arere.* This word Arere, is to bee observed, for it is not necessary that the

the grantee of the rẽt should demand it at the very time when it becommeth due, but at any time after it is sufficient, for this is not like a demand of a rent upon a condition, because that is penall and overthrowmeth the whole state, and (x) therefore the time of demand must be certaine, to the end the Lessee, Donee, or Feoffee may be there to pay the rent, but a demand of a Rent secke or Rent charge is but onely a formall mean to recover that which is due, (y) and therefore in that case it may be demanded after it is behinde at any time, whether the Tenant be present or no, for remedies for rights are ever favourably extended.

(x) 29.Ass.51. 8.H.6.11. Lib.de Entries 79.b.

(y) Mich.41.E.3.coram Rege adjudge accordingly.

¶ *Ceo est un denier en ley.* For whersoever there is a Lawfull demand of a Rent, and the same is not paid, whether the Tenant be present or absent, yet this is a denyall in Law, albeit there bee no words of denyall. It appeareth here that the demand must be made upon the land, and albeit the Tenant nor any for him be there, yet must the Grantee demand it, because without a demand there can be no denier in Deed, or in Law.

ou les tenemẽts pur payer l'rent quaunt il demaund les arrerages, ceo est un dẽnier en ley & un disseisin en fait, & de tiels disseisins il poit aver Assise de Novel disseisin envers l'tenãt, & recovera l'seisin del rent, & ses arrerages & ses dammages, & les costages d' sõ brẽ & de sõ plee, &c. Et si apres tiel recoũy & execution ewe le rent soyt auter foits a luy denie, donque il avera un rediseisin, & recovera ses double damages, &c.

ning upon the lãds or tenements to pay the rent when he demandeth the arrerages, this is a deniall in law, and a disseisin in deed, and of such disseisins he may have an Assise of *Novel disseisin* against the tenãt, & shal recover the seisin of the rent, & his arrerages, & his dammages, & the costs of his writ & of his plea, &c. And if after such recovery & execution had, the rent be againe denied unto him, then he shal have a rediseisin, and shall recover his double damages, &c.

(z) Vide Bract.li.4.fo.161. 262 224. Brit.ca.42.43.&c.f.83. 106.114,115,118. Mir.ca.2.Sect.1. * Fleta li.4.ca.1.Bra.ubi supra.

¶ *Disseisin.* (z) Disseisina, is a putting out of a man out of seisin, and ever implyeth a wrong. But dispossessing or ejectment is a putting out of possession, and may bee by right or by wrong. * Omnis disseisina est transgressio, sed non omnis transgressio est disseisina, si eo animo forte ingrediatur fundum alienum, non quod sibi usurpet tenementum, vel jura, non facit disseisinam, sed transgressionem, &c. quærendum est a judice quo animo hoc fecerit, &c. And of Ancient time a Disseisin was defined thus, Disseisin est un personel trespasse de tortious ouster del seisin.

Mirr.cap.2.Sect.15. Bracton lib.4.cap.4. Britton cap.44.45.&c. Fleta lib.4.ca.5.&.2.& 3. Mirror cap.2.Sect.15.

¶ *Assise de novel disseisin.* Assisa novæ disseisinæ. Assisa properly commeth of the Latin word Assideo, which is to associate or sit together, So as properly Assise is an association or sitting together. And the writ whereby certaine persons are authorised and called together, is called Assisa novæ disseisinæ; so as Assisa is but Cessio, but because Cessio is but a generall word, therefore in this sense Assisa is used in law for a particular Cession by force of the Writ de Assisa novæ disseisinæ, and accordingly it was anciently said Assise in un case nest auter chose que cession des Justices, and it is called Assisa novæ disseisinæ, for that the Justices of Eire before whom these Assises were taken in their proper Counties, did ride their Circuits from 7 yeares to 7 yeares, and no Disseisin before the Eire if it were not complained of in the Eire could be questioned after the Eire, and therefore a disseisin committed before the last Eire was called an ancient Disseisin, and a Disseisin after the last Eire was called a new disseisin or Nova disseisina. Assisa also signifieth a Jury, of their sitting together, and also a Cession of Parliament, as Littleton hereafter in this chapter saweth.

¶ *Et recovera le seisin del rent.* Here, and by the (&c.) in the end of this Section is implyed, that our Author intendeth his case where the rent issueth out of lands in one County, for if a man be seised of two acres of land in two severall Counties, and maketh a lease of both of them reserving two shillings rent, in this case, albeit severall Liveries be made at severall times, yet is it but one entire rent in respect of the necessity of the case, and he shall distreyne in one County for the whole, and make one avowrie for the whole. But he shall have severall Assises in confinio comitatus, and in either Countie shall make

make his plaint of the whole rent, but there shall be but one Patent to the Justices. (a) And this Assise in confinio comitatus, is given by the statute of 7.R.2 cap.10. for no Assise lay in that case at the Common Law, but the party might distraine. (b) But for a Common of pasture, of Turbary, of Pischary, of Estovers, and the like in one County, appendant or appurtenant to land in another County, an Assise in confinio comitatus, did lye at the Common Law, (c) & so it is of a Nusans done in one County, to lands lying in another County, the like Assise did lye at the Common Law.

(a) 10.Ass.pl.4. 18.Ass.p.1.&.18.E.3.32. 22.H.6.9.10.

(b) F.N.B.180.2.

(c) F.N.B.183.k.

(d) And albeit the Counties doe not adjoyne, but there be 20. Counties meane betweene them, yet the Assise in confinio comitatus doth lye, and the Justices shall sit betweene the said Counties. (e) And where it is said before of two Counties, the like law it is if the same extend into more Counties.

(d) 5.E.4.2.

(e) F.N.B.180.2.

(f) if a man hold divers Mannors or lands in divers severall Counties by one tenure, & the Lord is defeated of his services, he shall have severall writs of Customs and services, for every County one writ returnable at one day in the Court of Common pleas, and thereupon count according to his case by the Common Law.

(f) 30.E.1.tit.Droit. F.N.B.151.m.

(g) But if the Tenant in that case doe cease, the Lord shall not have severall writs of Cessavit ut supra, for the writ of Cessavit is given by Statute * and the forme and manner of the writ therein prescribed, and thereupon it is holden in our bookes that in that case a Cessavit doth not lye.

(g) 18.Ass.pl.1. *W.2.cap.21.

¶ (h) *Il avera un rediſſeiſin & recovera ſes double damages, &c.* Here by this (&c.) is also to be understood, that a writ of Rediſſeiſin is given by the Statute of Merton * (so called because the Parliament was holden at Merton in anno 20.H.3.) the Letter whereof is, Item ſi quis fuerit diſſeiſitus de libero tenemento & coram Juſticiariis itinerantibus ſeiſinam ſuam recuperaverit per Aſsiſam novæ diſſeiſinæ vel per recognition' eorum qui fecerint diſſeiſinam, & ipſe d ſſeiſitus, per vicecomitem ſeiſinam ſuam habuerit, ſi iidem diſſeiſitores poſtea poſt iter Juſticiariorum vel infra de eodem tenemento iterum eundem conquerentem diſſeiſiverint, & inde convicti fuerint ſtatim capiantur, &c. But the double damages are given by the Statute of W.2.cap.26.

(h) Bracton fol.216. Britton 133.246. Fleta lib.4.cap.29. Merton cap.2.Sect.15. Regiſt.206, 207. *Mirror ca.3. W.2.c.46. Vide Sect.234.

Vide Regiſt.206.b.

And Littleton in few words hath made a good exposition of this statute, for where the statute saith Diſſeiſitus de libero tenemento, Littleton expounds it (i) to extend to a Rent secke or Rent charge, albeit as hath been said, they be against common right, yet a man hath a freehold in them. (k) And he that granteth Omnia tenementa ſua, a Rent charge or a Rent secke doth passe.

(i) 40.Ass.23.2c.

(k) 14.E.4.4. 11.H.6.22.

Coram Juſticiariis itinerantibus, &c. saith the Statute. But Littleton speaketh generally, and so is the statute to be intended before any other Justices that have authority to take Assises, and Justices Itinerant are set downe but for an example, which is worthy of the observation, (l) being a penall law.

(l) F.N.B.189.h.

Recuperaverit per aſsiſam, &c. saith the statute: here aſsiſa is taken for the verdict of the Assise, as Littleton hereafter in this chapter expounds the same. Vel per recognitionem, &c. or by confession. Then the question is, what if the recovery were upon a demurrer or by pleading of a Record and failer of it, or by any other maner? And seeing Littleton speaketh generally, it must be understood of all maner of recoveries in an Assise of Novel diſſeiſin; and so it is confirmed by the Statute of W.2.cap.26.

¶ *Recoverie.* Recuperatio commeth of the verbe Recuperare, i. ad rem per injuriam extortam ſive detentam per ſententiam Judiciis reſtitui. And Recuperatio in the Common Law, is all one with Evictio in the Civill Law, which is, Alicujus rei in cauſam alterius abductæ per Judicem acquiſitio.

¶ *Et execution ewe,* Per vicecomitem ſeiſinam habuerit, saith the Statute, but Littleton speaketh generally, (Et Execution ewe,) And execution had, so as whether it bee by the Sheriffe or by the party, so as an execution or possession be had, it sufficeth.

¶ *Execution.* Executio, and signifieth in Law, The obtaining of actuall possession of any thing acquired by judgement of law, or by a Fine executory levied, whether it be by the Sheriffe, or by the entry of the party, whereof you shall reade more hereafter.

Vide Sect.504.

Note, it appeareth here by Littleton, That (m) the recovery in a former writ must bee in Assise of Novel diſſeiſin, wherein these words (Tiel recoverie) are to be observed. And therefore if in a writ of Right close in ancient Demesne, the Demandant maketh his protestation, to sue in the nature of Assise of Novel diſſeiſin, and after is re-diſſeiſed, hee shall not have a writ of Re-diſſeiſin, because the first recovery was not by writ of Assise of Novel diſſeiſin. (n) And so it is if the recovery were in Assise of Fresh force by Bill, according to the custome of some City or Borough, also in ancient Demesne there be no Coroners.

(m) 14.E.2.tit.Rediſſ.9. F.N.B.189.g.

(n) 14.E.3.tit.Rediſſ.8. Vide the 2.part of the Institutes ſtat.de Merton, cap.3.

Si iidem diſſeiſitores, saith the Statute. (o) So as it must be the same Diſſeiſors: but here

(o) 9.H.4.5. F.N.B.189.c. Iidem 23.Ass.pl.7.

Idem is taken for non alii. And therefore if the recovery in the Assise were against two Disseisors, and one of them re-disseise him againe, he shall have a Re-disseisin against him, for here is not alius. But if the recovery had bin against one, and he and another re-disseise the plaintife, he shall not have a Re-disseisin, for here is alius, and he cannot have a Re-disseisin against the former Disseisor alone, because he is Joyntenant with another. (p) For Joyntenancy in a Writ of Re-disseisin is a good plea, and a stranger shall not be subject to double imprisonment and double dammages.

(p) 33. E. 3. redisseisin 7.

(q) 9. H. 4. 5. F. N. B. 188. E.

(q) If a recovery be had against a woman in an Assise of Novel Disseisin, and the plaintife recovereth and hath execution, the woman taketh husband, and both of them re-disseise the Plaintife, he shall not have a Re-disseisin, because the husband is alius. (r) And yet if a Feme recover in an Assise, and after take Baron, and they are re-disseised, the husband and wife shall have a Re-disseisin, because the husband joyneth for conformity, and it is in the right of his wife who was disseised before, so in effect it is idem disseisitus & idem conquerens.

(r) F. N. B. 188. E. Regist. 9. H. 4. 5.

If two Coparceners be disseised, and recover in an Assise, if after they make partition, and after they be severally disseised, they shall have severall re-disseisins, & so it is of jointenants, for they be Iidem conquerentes, & non alii. Also a re-disseisin doth lye against the disseisor which doth re-disseise, and against another to whom he made feoffment after the second disseisin, for otherwise the re-disseisor might prevent the plaintife of his re-disseisin. But in an Assise against A. and B. A. is found Disseisor, and B. Tenant, and the Plaintife doth recover, & after he which was found Tenant disseises the Plaintife, he shal not have a re-disseisin, because he did disseise him but once.

F. N. B. 188. G.

De eodem tenemento, saith the Statute. If the Plaintife be re-disseised of parcel of the tenement formerly recovered, he shall have a re-disseisin.

If the Meine recovereth a rent when it is a rent service, and after the rent becommeth a Rent Seck by surplusage, and doth re-disseise him of the rent, he shall have a re-disseisin, for the substance of the rent remaines, though the quality be altered.

(s) If tenant in speciall taile recovereth in Assise, and after becommeth Tenant in taple after possibility of issue extinct, and then is re-disseised, he shall have a re-disseisin. For albeit the state of Inheritance be altered, yet the same freehold remaineth.

(s) 26. H. 6. tit. Assi 77.

If a man recover Land in an Assise of Novel disseisin, whereunto there is a common appendant or appurtenant, and after is re-disseised of the common, he shall have a re-disseisin of the common, for it was tacitely recovered in the Assise.

8. E. 3. tit. Redisseisin 6. F. N. B. 189. F.

Sect. 234.

ÆQuivocum. For the better understanding hereof, of these there be two kinds, viz. Æquivocum Æquivocans; and Æquivocum Æquivocatum.

Æquivocum Æquivocans est plurivocum; Polysemus, a word of divers severall significations.

Æquivocum Æquivocatum est univocum, that is to say, reduced to a certaine signification, as here in Littletons example, Assisa est nomen æquivocum æquivocans, for sometime it signifieth a Jury, sometime the writ of Assise, and sometime an Ordinance or Statute.

Now Assise, Jurata is Æquivocum Æquivocatum, and so is breve de Assisa novæ disseisinæ, and Assisa panis, &c. even as Canis est nomen æ-

CEt memorandum, que cest noisme Assise, est nomen æquivocum, car ascun foits est prise pur un Jurie, car le commencement de le Record de Assise de nobel disseisin issint commencera: Assisa venit recognitura, &c. quod idem est quod Jurata venit recognitura, &c. Et la cause est, pur ceo que per le briefe de Assise, il est command a la Vicont, Quod faceret duodecim

And *memorandum*, that this name Assise is *nomen Equivocum*, for sometimes it is taken for a Jurie; for the beginning of the Record of an Assise of *Novel disseisin* beginneth thus, *Assisa venit recognitura, &c.* which is the same as, *Jurata venit recognitura.* And the reason is, for that by the writ of assise it is commanded to the Sherife, *Quod faceret duodecim liberos & legales homi-*

duodecim

duodecim liberos & legales homines de vicineto, &c. videre tenementum illud, & nomina illorum imbreviare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c. **Et pur ceo que per tiel original, un panel per force de meſme le briefe devoit eſtre returne, &c. il eſt dit en l' commencement del Record en le Aſſiſe,** Aſſiſa venit recognitura, &c. **Jury en briefe de droit il eſt communement dit, que le tenant luy poit mitter en Dieu & grand Aſſiſe, &c. Jury il y ad un briefe en le** Regiſter, **que eſt appel briefe** de Magna Aſſiſa eligenda. **Iſſint eſt ceo bien prove que ceſt noſme Aſſiſe,** aliquando ponitur pro Jurat'. **Et aſcun foits il eſt priſe pur tout le briefe dalſiſe, & ſolonque cel entent il eſt pluis properment, & pluis communement priſe,** ſicome Aſſiſe de Novel diſſeiſin **eſt priſe pur tout l' breve** de Aſſiſe de novel diſſeiſin. **Et en meſme le maner Aſſiſe de** *nes de vicineto, &c. videre tenementum illud, & nomina illorum imbreviare, & quod ſummoneat eos per bonos ſummonitores, quod ſint coram Juſticiariis, &c. parati inde facere recognitionem, &c.* And becauſe that by ſuch an originall, a Pannell by force of the ſame writ ought to be returned, &c. it is ſaid in the beginning of the Record in the Aſſiſe, *Aſſiſa venit recognitura, &c.* Alſo in a writ of right it is commonly ſaid that the Tenant may put himſelfe on God and the great Aſſiſe. Alſo there is a Writ in the regiſter which is called a Writ *De magna Aſſiſa eligenda:* So as this is well proved that this name Aſſiſe ſometimes is taken for a Jury, and ſomtimes it is taken for the whole writ of Aſſiſe, and according to this purpoſe it is moſt properly and moſt cõmonly taken, as an Aſſiſe of *Novel diſſeiſin* is taken for the whole writ of Aſſiſe of *Novel diſſeiſin.* And in the ſame manner an Aſſiſe of Common of Paſture is taken for the whole Writ of Aſſiſe

quivocum, Canis latrabilis, Canis marinus, Canis Cœleſtis ſunt æquivoca æquivocata.

¶ *Aſſiſe de novel diſſeiſin.* **Note** (a) **there bee foure Aſſiſes,** viz. **this writ, an Aſſiſe of** Mortdanceſter, **of** Darreine præſentment, **and of** Utrum. (a) Bracton lib.4.fo.162. Britton ca.42.fo.105.134. F.N.B.Fleta lib.4.ca.5. &c. Mirror ca.2.Sect.13.

¶ *Vicount.* Vide Sect.248. Verbo (*Shireve.*)

¶ *Quod faciat 12. liberos & legales homines de Vicineto, &c.*

(b) **Albeit the words of the writ be** duodecim, **yet by ancient courſe the ſheriffe muſt returne 24. and this is for expedition of Juſtice, for if 12. ſhould onely be returned, no man ſhould have a full Jury appeare, or be ſworn in reſpect of challenges, without a Tales, which ſhould be a great delay of tryals. So as in this caſe uſage & ancient courſe maketh Law. And it ſeemeth to me, that the Law in this caſe delighteth her ſelfe in the number of 12. for there muſt not onely be 12.** Jurors **for the tryall of matters of fact,** (c) **but 12.** Judges **of ancient time for tryall of matters in Law,** in the Exchequer Chamber. **Alſo for matters of State there were in ancient time twelve** Counſellors of State. **Hee that wageth his Law muſt have** eleven others with him **which thinke hee ſayes true. And that** number of twelve **is much reſpected** in Holy Writ, **as,** twelve Apoſtles, twelve Stones, twelve Tribes, &c. (b) 1.H.7.2. (c) Vid.Pl.com.in proœmio. Joſ.4.Gen.49.

(d) **Hee that is of a Jury, muſt be** liber homo, **that is, not only a freeman, and not bond, but alſo one that hath ſuch freedom of mind as he ſtands indifferent as hee ſtands unſworne. Secondly, he muſt bee** legalis. **And by the Law every Juror that is returned for the tryall of any iſſue or cauſe, ought to have three properties.** (d) 9.E.4.16.

(*) Firſt

common de paſture eſt pris pur tout le briefe daſſiſe de common de paſture, & Aſſiſe de mortdanceſter eſt priſe pur tout le bꝛe daſſiſe de Mortdanceſter & Aſſiſe de darraine preſentmẽt eſt priſe pur tout le breve daſſiſe de darraine preſentment. Mes il ſemble que le cauſe pur q̃ tiels briefes al commencement fueront appels Aſſiſes fuit pur ceo que p chescun tiel briefe il eſt commande al viſcont, Qd' ſummoneat xii. le quel eſt a tant adiũ, que doit ſummoner un Jurie. Et aſcun foits aſſiſe eſt priſe pur un ordinance, s. pur mitter certaine choſes en certaine rule & diſpoſition, ſicome ordinance q̃ eſt appel Aſſiſa panis & cerviſiæ.

of Common of Paſture. And Aſſiſe of *Mortdanceſter*, is taken for the whole Writ of Aſſiſe of *Mortdaunceſter*, and Aſſiſe of *Darreine præſentment*, is taken for the whole writ of *Darreine præſentment*. But it ſeemes that the reaſon why ſuch writs at the beginning were called Aſſiſes, was, for that by every ſuch writ it is commanded to the Sherife, *Quod ſummoneat* 12. which is as much to ſay, that he ought to ſommon a Jury. And ſometime Aſſiſe is taken for an ordinance, to wit, to put certaine things into a certaine rule and diſpoſition, as an Ordidinance which is called *Aſſiſa panis & cerviſiæ.*

(*) Firſt, hee ought to bee dwelling moſt neere to the place where the queſtion is moved.

Secondly, hee ought to bee moſt ſufficient, both for underſtanding, and competency of eſtate.

Thirdly, hee ought to bee leaſt ſuſpitious, that is, to be indifferent as he ſtands unſworne, and then hee is accounted in Law Liber & legalis homo, otherwiſe he may be challenged & not ſuffered to be ſworne. The moſt uſuall triall of matters of fact is by 12. ſuch men, for ad quæſtionem facti non reſpondent Judices. And matters in Law the Judges ought to decide and diſcuſſe, for Ad quæſtionem juris non reſpondent Juratores.

(*) Artic. ſuper Cart. ca. 9. Regiſt. 178. 8.E.3.30.

Vide Sect. 122. 193.

9.H.6.37.

(c) For the inſtitution and right uſe of this triall by 12. men, and wherefore other Countries have them not, & how this triall excels others, ſee Forteſcue at large, cap. 25. &c. 29. (f) And in ancient time they were 12. Knights. This triall of the fact per duodecim liberos & legales homines is very ancient, for heare what the Law was before the Conqueſt: (g) In ſingulis Centuriis comitia ſunto, atque liberæ conditionis viri duodeni ætate ſuperiores unà cum præpoſito ſacra tenentes juranto, &c. May the tryall in ſome caſes, Per medietatem linguæ, (as we ſpeake) was as ancient, (h) Viri duodeni jure conſulti, Angliæ ſex, Walliæ totidem, Anglis & Wallis jus dicunto, and of ancient time it was called, duodecim virale judicium.

(c) Artic. ſuper Cart. ca. 9. Mortſe. ca. 25. &c.

(f) Glanvill lib. cap. 14. 15. Bracton li. 3. fo. 116. a.

(g) Lamb. verb. Centuria.

(h) Lamb. fol. 91. 3.

Now ſeeing we are juſtly occaſioned, and the rather for the (&c.) herein, to ſpeak of a challenge to Jurors, to make the ſtudious Reader capable of the underſtanding of the Bookes of Law concerning this matter, it ſhall be neceſſary to ſay ſomewhat of challenges; and firſt what a Challenge is.

Challenge is a word common as well to the Engliſh as to the French, and ſometime ſignifieth to claim, and the Latine word is vendicare, ſomtime in reſpect of revenge to challenge into the field, and then it is called in Latine vindicare or provocare. Sometime in reſpect of partiality or inſufficiency, to challenge in Court perſons returned on a Jury And ſeeing there is no proper Latin word to ſignifie this particular kind of challenge, they have framed a word anciently written (a) Chalumniare, and Columpniare, and Calumpniare, and now written Calumniare, and hath no affinity with the verbe Calumnior, or Calumnia, which is derived of that, for that is of a quite other ſenſe, ſignifying a falſe accuſer, and in that ſenſe (b) Bracton uſeth Calumniator to be a falſe accuſer: but it is derived of the old word Caloir or Chaloir, which in one ſignification is to care for, or foreſee. And for that to challenge Jurors is the mean to care for or foreſee, that an indifferent triall be had, it is called Calumniare, to challenge, that is, to except againſt them that are returned to be Jurors, & this is his proper ſignification: (c) But ſometimes a Sommons, Sommonitio is ſaid (d) to bee Calumniata, and a Count to be chal-

(a) W. 2. cap 32. Vide Stat. de 12. E. 2. de eſſon. calumniandis. Fleta lib. 1. cap. 32. Britton fol. 6. a. 22. a. 118. & 134. 12. Aſſ. 10.

(b) Bract. lib. 3. fol. 137.

(c) Bract. lib. 4. fol. 257. Vet. N. B. fol. 76.

lenged,

lenged, but this is improperly. And forasmuch as mens lives, Fames, lands, and goods are to be tryed by Jurors, it is most necessary that they bee Omni exceptione majores, and therefore I will handle this matter the more largely.

A challenge to Jurors is twofold, either to the array, or to the Polls: to the Array of the principall pannell, or to the array of the Tales. And herein you shall understand, that the Jurors names are ranked in the pannel one under another, which order or ranking the Jurie is called the array, and the Verbe, to array the Jury, and so wee say in common speech, Battaile array, for the order of the battaile. And this array we call Arraiamentum, and to make the array, Arraiare, derived of the French word arroier, so as to challenge the array of the Pannell, is at once to challenge or except against all the persons so arrayed or impannelled, in respect of the partiality or default of the Sherife, Coroner, or other officer that made the returne.

And it is to bee knowne, that there is a principall cause of challenge to the Array, and a challenge to the favour: principall, in respect of partiality, as first, if the Sherife or other officers be of (a) kindred or affinity to the Plaintife or Defendant, if the affinity continue. (b) Secondly, If any one or more of the Jury bee returned at the denomination of the party, Plaintife or defendant, the whole array shall bee quashed. So it is if the Sherife returne any one, that he be more favourable to the one than to the other, all the array shall be quashed. (c) Thirdly, if the Plaintife or defendant have an action of battery against the Sherife, or the Sherife against either party, this is a good cause of challenge. So if the Plaintife or defendant have an action of debt against the Sherife, (but otherwise it is if the Sherife have an action of debt against either party) or if the Sherife have parcell of the land depending upon the same title, (d) or if the Sherife or his Baylife which returned the Jury, be under the distresse of either party, or if the Sherife or his Baylife be either of Counsell, Attorney, Officer in fee, or of Robes, or servant of either party, Gossip, or Arbitrator in the same matter, and treated thereof. (e) And where a subject may challenge the array for unindifferencie, there the King being a party, may also challenge for the same cause, as for kindred, or that he hath part of the land, or the like: and where the array shal be challenged against the King, you shall reade in our Bookes.

(f) By default of the Sherife, as when the array of a Pannel is returned by a Baylife of a Franchise, and the Sherife returne it as of himselfe, this shall be quashed, because the party should lose his challenges. But if a Sherife return a Jury within a Libertie, this is good, and the Lord of the Fraunchise is driven to his remedy against him.

If a Peer of the Realme or Lord of Parliament be demandant or Plaintife, tenant or defendant, there must a Knight be returned of his Jury, be he Lord Spirituall or Temporall, or else the array may be quashed: but if he be returned, although he appeare not, yet the Jury may be taken of the residue. And if others be joyned with the Lord of parliament, yet if there be no Knight returned, the array shal be quashed against all. (h) So in an attaint there ought to be a Knight returned to the Jury.

(i) And when the King is party, as in travers of an Office, he that traverseth may challenge the array, as hereafter in this Section shall appeare: And so it is in case of life, and likewise the King may challenge the array, and this shall be tryed by Tryors according to the usuall course. (k) The array challenged on both sides shall be quashed.

(l) And if two estrangers make a Pannel, and not in favourable maner for the one party or the other, and the Sherife returnes the same, the array was challenged for this cause, and adjudged good.

(m) If the Baylife of a Liberty returne any out of his Franchise, the array shall be quashed, as an array returned by one that hath no Franchise shall be quashed.

Challenge to the array for favour: (n) He that taketh this, must shew in certaine the name of him that made it, and in whose time, and all in certainety: This kinde of Challenge being no principall challenge, must bee left to the discretion and conscience of the Triors, as if the Plaintife or Defendant bee Tenant to the Sherife, this is no principall Challenge, for the Lord is in no danger of his Tenant, but è converso it is a principall Challenge, but in the other hee may challenge for favour, and leave it to tryall. So affinity betweene the sonne of the Sherife and the daughter of the party, or è converso. or the like, is no principall challenge, but to the favour: but if the Sherife marry the daughter of either party, or è converso, this (as hath beene said) is a principall challenge, or the like. (o) But where the King is party, one shall not challenge the array for favour, &c. because in respect of his allegeance hee ought to favour the King more. But if the Sherife be a Madelect of the Crowne, or other mentall servant of the King, there the challenge is good, and likewise the King may challenge the array for favour.

Note, upon that which hath been said it appeareth, that the challenge to the array is in respect of the cause of unindifferency or default in the Sherife or other Officer that made the returne

(a) 12.Ass.36.26. Ass.31.3.E.4.12. 31.Ass.7.29.Ass.2. 22.E.4.2.12.E.3. Chall.114.21.E.3.5.b. 3.H.7.5.Pl.Com.73. 15.H.7.9.7.E.6. Dyer 78. 12.H.6.Chall.159.
(b) 21.E.4.74.49.E.3.1. 15.E.3.43.22,E.3.12. 9.E.4.46.8.H.5.5. 28.Ass.22.41.E.3. Chall.99.
(c) 11.H.4.26.22.E.4.1. 38.E.3.25.38.H.6.6.
(d) 44.E.3.5.& 38. 44.Ass.23.22.E.4.1. 3.H.6.39.15.H.7.9.b. 27.Ass.28.7.H.7.10. 26.Ass.56.22.20.H.6.34. 33.Ass.12.45.Ass.1.
(e) 9.Ass.8.8.Ass.23.7.E.3.56. 21.H.7.38.2.H.4.13. 44.E.3.43.20.H.6.39. 44.Ass.18.3.H.6.24. 17.E.2.Chall.168. 4.E.4.11.
(f) 4.H.7.44.E.3.38. 38.Ass.19.22.E.4.Chall. 63.Stamf.163.c. 59 Ass.2.17.E.3.50. 17.Ass.11.30.Ass.5. 8.Ass.3.
(g) 13.E.3.Chall.115.Br. Enquest.100.Lib.6.fo.54. Countesse de Rutlands case Plo.Com.117. 27.H.8.22. 4.El.Dier 208.8.Eliz.Di. 246.14.Eliz.Dier 318.10. Eliz.Dier 265.b.
(h) 17.E.2.Attaint.59.
(i) 32.E.4 tit.Chall.63. Stamf.Pl.cor. 19.Ass.6.b. 4 H.7 8.44.E.3.38.
(k) 8.H.4.22.
(l) 6.R.2.Chall.102. 13.E.3.ibid.108.
(m) 32.E.3.Chal.110.111. 32.Ass.6.38.Ass.13.
(n) 34.H.6.Chall.69. 8 H.4.22.27.Ass.20. 22.E.3.12. Vid.26.Ass.21. 38.H.6.9.7.H.6.25. 19.H.6.48.20.H.6.38. 20.E.4.2.22.E.4.Chal.62.
(o) 22.E.4.Chal.63. 4.H.7.8.

returne, and not in respect of the persons returned, where there is no unindifferencie or default in the Sheriffe, &c. for if the challenge to the Array be found against the party that takes it, yet he shall have his particular challenge to the Polls.

In some cases a challenge may be had to the Polls, & in some cases not at all. Challenge to the Pols is a challenge to the particular persons, and these be of foure kinds, that is to say, Peremptory, Principall, which induce Favour, and for default of Hundredors.

(p) Peremptory, this is so called, because he may challenge peremptorily upon his owne distrust, without shewing of any cause, and this only is in case of Treason or Felony, in favorem vitæ, and by the Common Law the prisoner upon an Endictment or Appeale might challenge thirty five, which was under the number of three Juries, but now by the Statute of 22.H.8. the number is reduced to twenty in petite Treason, Murder and Felony, and in case of high Treason, and Misprision of high Treason it was taken away by the Statute of 33. H.8. but now by the Statute of 1.& 2.Phil & Mariæ, the Common Law is revived for any Treason, the prisoner shall have his challenge to the number of thirty five, and so it hath been resolved * by the Justices, upon conference betweene them in the case of Sir Walter Raleigh and George Brookes. But all this is to be understood when any subject that is not a Peere of the Realme is arraigned for Treason or Felony: But if he be a Lord of Parliament, and a Peere of the Realme, & is to be tryed by his Peers, he shall not challenge any of his Peers at all, for they are not sworne as other Jurors be, but finde the party guilty or not guilty, upon their faith or allegeance to the King, and they are Judges of the fact, and every of them doth separately give his judgement, beginning at the lowest. But a subject under the degree of Nobility may in case of Treason or Felony challenge for just cause as many as he can, as shall be said hereafter. In an Appeale of death, against divers they plead not guilty, and one joint Venire facias is awarded, if one challenge peremptorily, he shall be drawne against all. Otherwise it is of severall Venire fac.

Note, that at the Common Law, before the Statute of 33.E.1. the King might have challenged peremptorily without shewing cause, but only that they were not good for the King, and without being limited to any number, but this was mischievous to the subject, tending to infinite delayes and danger. And therefore it is enacted. (q) Quod de cætero licet pro Domino Rege dicatur quod juratores &c. non sunt boni pro Rege: non propter hoc remaneant inquisitiones, &c. sed assignent certam causam calumniæ suæ, &c. whereby the King is now restrained.

Principall, so called, because if it be found true, it standeth sufficient of it selfe without leaving any thing to the conscience or discretion of the Triors. Of a principall cause of challenge to the array, we have said somewhat already, now it followeth with like brevitie to speake of principall Challenges to the Polles, (that is) severally to the persons returned.

Principall challenges to the Poll may be reduced to foure heads. First, Propter honoris respectum, For respect of Honour: Secondly, Propter Defectum, For want or default: Thirdly, Propter Affectum, For affection or partiality; Fourthly, Propter Delictum, For Crime or Delict.

First, Propter Honoris respectum, As any Peere of the Realme, or Lord of Parliament, as a Baron, Viscount, Earle, Marquesse, and Duke, for these in respect of Honour and Nobility, are not to be sworne on Juries, and if neither party will challenge him, he may challenge himselfe, for by Magna Charta it is provided, Quod nec super eum ibimus, nec super eum mittemus nisi per legale judicium parium suorum, aut per legem terræ. Now the common law hath divided all the subjects into Lords of Parliament, and into the Commons of the Realm. The Peers of the Realme are divided into Barons, Viscounts, Earles, Marquesses & Dukes: The Commons are divided into Knights, Esquires, Gentlemen, Citizens, Yeomen, and Burgesses, and in judgement of Law, any of the said degrees of Nobilitie are Peeres to another. As if an Earle, Marquesse, or Duke be to be tried for treason or felonie, a Baron or any other degree of Nobility is his peer. In like manet, a Knight, Esquire, &c. shall be tryed per Pares, and that is by any of the Commons, as Gentlemen, Citizens, Yeomen, or Burgesses, so as when any of the Commons is to have a tryall either at the Kings suit, or between party and party, a Peere of the Realme shall not be impanelled in any case.

Secondly, Propter Defectum,

1. Patriæ, (a) as Aliens borne.

2. Libertatis, (b) as Villeins or Bondmen, and so a Champion must be a Freeman.

3. Annui census, i. liberi tenementi. (c) First, what yearely freehold a Juror ought to have that passeth upon triall of the life of a man, or in a plea reall, or in a plea personall where the debt or dammage in the declaration amounteth to fortie Marks, Vide Sect.464. * Secondly, this freehold must be in his owne right, in fee simple, fee taile, for terme of his owne life, or for another mans life, although it be upon condition, or in the right of his wife out of ancient demesne, for freehold within ancient demesne will not serve, but if the debt or dammage amounteth

(p) 1.H.5.Chal.162. 9.H.5.7. 15.E.4.32. 14.H.7.7. 19.Doct.& Stud.lib.2.Fortescue cap. 27. 3.H.7.2. 2.R.3.13. 32.H.6.16. 17.Ass.6. 37.H.6.8. 22.H.8.ca.14. 33.H.8 tit.Chal.Br.217. 33.H.8 ca.23. 1.& 2.P.& M.ca.10. 23.H.6.26. 14.H.7.14. Stanf.Pl.Cor. 137.138.

*Hil.1.Ja.R.

9 E.4.27.

v. Flowden f. 100. a.

(q) 33.E.1.Ordinatio de Inquisitionibus Stanf.Pl. Cor.162.

Lib.6.fo.52.53. Countesse de Rutlands case. 48.E.3.30. 48.Ass.6. 35.H.6.46. 22.Ass.24. F.N.B.165. d.e.& 166.Regist.179.

(a) Lib.7.fo.18.Calvins case Lit.10.fo.104. 14.H.4.9.b.

(b) Bract f 185. Brit.f.135. Flet.li.4.ca.8. 26.Ass.28. 3.H.6.39. 9.E.4.16.b. 21.H.6.20. 10.H.7.22.

(c) Vid sect.464.38.ass.19. 17.Ass.15. 4.H.6.38. 9.H.5.5. 10.H.6.7.8.18. 2.H.7.1.10.H 7.14. 19.H.6.9. 7.H.6.25.40. 44. 12.E.4.13. 3.H.4.4.

(*) 9.H.6.Chal.27. 9.H.7.1.

A peremptory challenge shall not be admitted in appeal, because it is at y^e Suit of y^e party. vid. Doct. & Stud. D. 1. C. 8. p. 33

mounteth not to foꝛtie Marks, any free hold ſufficeth. (d) Thirdly, he muſt have freehold in that countie where the cauſe of the Action ariſeth, & though he hath in another, it ſufficeth not. (e) Fourthly, if after his returne he ſelleth away his land, oꝛ if Ceſty que vie, oꝛ his wife dieth, oꝛ an entry be made foꝛ the condition bꝛoken, ſo as his freehold be determined, he may be challenged foꝛ inſufficiencie of Freehold.

(d) 19.H.6.9 17. Aſſ. 15.

(e) 12.H.7. 4. 21.H.6.38. 7. H. 4. 1.

4. Hundredorum: Firſt, by the Common Law in a plea reall, mixt, & perſonall, there ought to be foure of the Hundꝛed (where the cauſe of Action ariſeth) returned foꝛ their better notice of the cauſe, foꝛ Vicini vicinorum facta præſumuntur ſcire. And now ſince Littleton wꝛote, (f) in a plea perſonall if two Hundꝛedoꝛs appeare, it ſufficeth, & in an Attaint, (g) although the Jury is double, yet the Hundꝛedoꝛs are not double. Secondly, (h) If he hath either Freehold in the Hundꝛed, though it be to the value but of halfe an acre, oꝛ if he dwel there, though he hath no freehold in it, it ſufficeth. (i) Thirdly, if the cauſe of the Action riſeth in divers Hundꝛeds, yet the number ſhall ſuffice, as if it had come out of one, & not ſeverall hundꝛedoꝛs out of each hundꝛed. (k) Fourthly, if there be divers hundꝛeds within one Leet oꝛ Rape, if he hath any Freehold, oꝛ dwell in any of thoſe Hundꝛeds, though not in the pꝛoper hundꝛed, it ſufficeth. (l) Fiftly, if the Jury come de corpore Comitatus, oꝛ de proximo hundredo, where the one partie is Lord of the Hundꝛed, oꝛ the like, there need no Hundꝛedoꝛs be returned at all. (m) Sixtly, if a hundꝛedoꝛ after he be returned, ſel away his Land within that Hundꝛed, yet ſhall he not be challenged foꝛ the Hundꝛed, foꝛ that this notice remaines, otherwiſe as hath bin ſaid foꝛ his inſufficiencie of Freehold, foꝛ his feare to offend, & to have Lands waſted, &c. which is one of the reaſons of Law, is taken away. (n) Seventhly, he that challengeth foꝛ the hundꝛed, muſt ſhew in what hundꝛed it is, and not dꝛive the other partie to ſhew it. Eightly, his challenge foꝛ the hundꝛed is not ſimpliciter, but ſecundum quid, foꝛ though it bee found that he hath nothing in the Hundꝛed, yet ſhall not he be dꝛawne, but remaine præter H. that is, beſides foꝛ the Hundꝛed, and albeit hee dwelleth oꝛ have Land in the hundꝛed, yet muſt hee have ſufficient Freehold.

(f) 27. Eliz. cap. 6.
(g) 7. H. 4. 47.
(h) 16. E.4.7.4. Mar. Br. Chall. 216.21.E.4.74. 75. 9. H. 6.66.
(i) 20. H. 6.23.4.Mar.Br. Chall. 216.
(k) 10. H. 6.5.12.H.4.14. 19. E. 4. 5.
(l) 37. H.6.11.25.E.3. 43.
(m) 21. H.6.38.12.H.7.4.
(n) Eliz.Dyer. 231.

3. Propter affectum: And this is of two ſoꝛts, either woꝛking a Pꝛincipall challenge, oꝛ to the favour. And againe a Pꝛincipall challenge is of two ſoꝛts, either by judgement of Law without any Act of his, oꝛ by Judgement of Law upon his owne Act.

Bract. fol. 185. Brit. fol. 134. 135. Fleta lib. 4. cap. 8. 21. E. 4. 11. 12.

And it is ſaid that a pꝛincipall challenge is, when there is expꝛeſſe favoꝛ oꝛ expꝛeſſe malice. Firſt, without any Act of his, as if the Juꝛoꝛ bee (a) of blood oꝛ kindꝛed to either partie, Conſanguineus, which is compounded ex Con & ſanguine, quaſi eodem ſanguine natus, as it were iſſued from the ſame blood, and this is a pꝛincipall challenge, foꝛ that the Law pꝛeſumeth that one Kinſman doth favour another before a ſtranger, (b) and how farre remote ſo ever he is of kindꝛed, yet the Challenge is good. And if the Plaintife challenge a Juꝛoꝛ foꝛ kindꝛed to the Defendant, it is no Counterplea to ſay that he is of kindꝛed alſo to the Plaintife, though he be in a neerer degree. Foꝛ the wꝛods of the Venire facias foꝛbiddeth the Juꝛoꝛ to be of kindꝛed to either partie.

(a) Britton fol. 135.

(b) Mirror cap. 3. de ordinance dattaint. Bracton, Britton, Fleta } ubi ſupra. 144.E1.Dier 319.21. E.4. 75.40.Aſſ. 20.Pl.Com. fo. 41. E.3. Chal.99.21. E. 4.75.

(c) If a body politick oꝛ incoꝛpoꝛate, ſole oꝛ aggregate of many, bꝛing any action that cõcernes their body politick oꝛ incoꝛpoꝛate, if the Juꝛoꝛ be of kindꝛed to any that is of that body (although the body politick oꝛ incoꝛpoꝛate can have no kindꝛed,) yet foꝛ that thoſe bodies cõſiſt of naturall perſons, it is a pꝛincipall Challenge. (d) A Baſtard cannot be of kindꝛed to any, and therefeꝛe it can be no pꝛincipall Challenge. And here it is to be knowne that Affinitas, Affinity, hath in Law two ſenſes. In his pꝛoper ſenſe it is taken foꝛ that Neerneſſe that is gotten by mariage, Cum duæ cognationes inter ſe diviſæ pꝛr nuptias copulantur & altera ad alterius fines accedit, & inde dicitur Affinis. In a larger ſenſe Affinitas is taken alſo foꝛ Conſanguinitie & Kindꝛed, as in the wꝛit of Venire facias, and other where. (e) Affinity oꝛ Alliance by Mariage is a pꝛincipall Challenge, and equivalent to Conſanguinity when it is betweene either of the parties, as if the Plaintife oꝛ Defendant marry the Daughter oꝛ Couſin of the Juꝛoꝛ, oꝛ the Juꝛoꝛ marry the Daughter oꝛ Couſin of the Plaintife oꝛ Defendant, and the ſame continues oꝛ iſſue be had. But if the Son of the Juꝛoꝛ hath maꝛied the daughter of the Plaintife, this is no pꝛincipall Challenge, but to the favour, becauſe it is not betweene the parties. Much moꝛe may be ſaid heꝛeof, ſed ſumma ſequoꝛ faſtigia rerum.

(c) Mirror Bracton, Britton, Fleta } ubi ſupra. 3.E.4.14.21.E.3.5.41. 43.E.3.Chall.93.43 Aſſ. 25.26.22.E.4.2.14.H. 7. 2. 15.H.7.9.

(d) 41.E.3.Chall.99.41.E3. 3.9.16.H.6.Chall.163.

(i) If there bee a Challenge foꝛ Coſinage, hee that taketh the Challenge muſt ſhew how the Juꝛoꝛ is Couſin. But yet if the Coſinage, that is the effect and ſubſtance be found, it ſufficeth, foꝛ the Law pꝛeferreth that which is materiall befoꝛe that which is foꝛmall.

(f) 19.H.8.7.28.H.8. Dier.37.1.Mariæ Dyer 91.2.Eliz.ibid. 177.

(g) If the Juꝛoꝛ have part of the Land that dependeth upon the ſame Title.

(g) Bracton, Britton, Fleta } ubi ſupra. Mirror ubi ſupra.

(h) If a Juꝛoꝛ be within the hundꝛed, Leet, oꝛ any way within the ſeigniozy immediately oꝛ mediately, oꝛ any other diſtreſſe of either party, this is a pꝛincipall Challenge. But if either party be within the diſtreſſe of the Juꝛoꝛ, this no pꝛincipall Challenge, but to the favour.

(h) 9.H. 6. tit. Chall. 27. 38.E.3.25.22.E.4.Chall. 61.4.H.6.25.3.H.6.39. 30.H.6.Chal.46.22.E.4.1. 27.Aſſ.28.22.E.3.12.

(i) If a witneſſe named in the Deed be returned of the Jury it is a good cauſe of Challenge of him. (k) So it is if one within age of one and twenty be returned, it is a good cauſe of Challenge.

(i) 23.Aſſ.11.

(k) Mirror ubi ſupra.

2. (l) Upon his own Act, as if the Juror hath given a verdict before, for the same cause, albeit it be reversed by writ of Error, or if after verdict, Judgement were arrested. So if hee hath given a former verdict upon the same Title or matter though between other persons (m) But it is to be observed, that I may speake once for all, that in this or other like cases, he that taketh the Challenge must shew the Record if hee will have it take place as a principall Challenge, otherwise he must conclude to the favour, unlesse it be a Record of the same Court, and then he must shew the day and terme.

(n) So likewise one may be challenged, that hee was Inditor of the Plaintife or Defendant either of Treason, Felony, Misprision, Trespasse, or the like in the same cause.

(o) If the Juror be Godfather to the Child of the Plaintife or Defendant, or è converso, this is allowed to be a good Challenge in our Bookes.

(p) If a Juror hath beene an Arbitrator chosen by the Plaintife or defendant in the same cause, and have beene informed of, or treated of the matter, this is a principall Challenge. Otherwise if he were never informed nor treated thereof, & otherwise if he were indifferently chosen by either of the parties, though he treated thereof. But a (q) Commissioner chosen by one of the parties for examination of witnesses in the same cause, is no principall cause of challenge, for he is made by the King under the great Seale, & not by the partie as the Arbitrator is, but he may upon cause be challenged for favour.

(r) If he be of counsell, Servant, or of Robes, or Fee, or of either partie, it is a principall Challenge.

(s) If any after he be returned do eate and drinke at the charge of either partie, it is a principall cause of Challenge, otherwise it is of a Tryor after he be sworne.

(t) Actions brought either by the Juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principall Challenge, unlesse they be brought by Covyn either before or after the returne, for if Covin be found, then it is no cause of Challenge; other Actions which doe not imply malice or displeasure, are but to the favour.

(u) In a cause where the Parson of a Parish is partie, & the right of the Church commeth in debate, a Parishioner is a principall Challenge. Otherwise it is in debt, or any other Action where the right of the Church commeth not in question.

(w) If either partie labour the Juror and give him any thing to give his verdict, this is a principall Challenge. But if either partie labour the Juror to appeare and to doe his conscience, this is no Challenge at all, but lawfull for him to doe it.

(x) That the Juror is a Fellow Servant with either partie, is no principall challenge but to the favour.

(y) Neither of the parties can take that Challenge to the Polls, which he might have had to the Array.

(a) Note if the Defendant may have a principall cause of Challenge to the array, if the Sherife returne the Jury, the Plaintife in that case may for his owne expedition alledge the same, and pray Processe to the Corroners, which he cannot have, unlesse the Defendant will confesse it, but if the Defendant will not cõfesse it, then the Plaintife shall have a venire facias to the Sherife, and the Defendant shall never take any challenge for that cause, and so in like cases. But on the part of the Defendant any such matter shall not be alledged, and Processe prayed to the Corroners, because he may challenge the Jury for that cause, and can bee at no Prejudice.

(b) Challenge concluding to the favour when either partie cannot take any principall Challenge, but sheweth causes of favour, which must be left to the conscience & discretion of the Tryors upon hearing their evidence to finde him favourable or not favourable. But yet some of them come neerer to a principall Challenge then other. (c) As if the Juror be of kindred or under the distresse of him in the reversion or remainder, or in whose right the Avowrie or Justification is made, or the like: These be no principall Challenges, because he in Reversion, Remainder, or in whose right the Avowrie or Justification is, is not partie to the Record, otherwise it is if they were made parties by Aide, Receipt, or Voucher, & yet the cause of favour is apparent; so it is of all principall causes, if they were partie to the Record. Now the causes of favour are infinite, and thereof somewhat may bee gathered of that which hath been said, and the rest I purposely leave the Reader to the reading of our Bookes concerning that matter. For all which the rule of Law is, that hee must stand indifferent as hee stands unsworne.

(d) The subject may challenge the Polles, where the King is partie. And if a man be outlawed of Treason or Felony, at the suit of the King, and the partie for avoyding thereof alledgeth imprisonment, or the like, at the time of the Outlawry, though the issue bee joined upon a collateral point, yet shal the partie have such Challenges, as if he had been arraigned upon the crime it selfe, for this by a meane concerneth his life also.

(l) 8.H.5.10. 33.H.6.1. 10.H.6.24 7.H.4.11. 18.E.4.12.21.E.4.74. 11.R.2.tit.Challenge 100 27.Ass.13.
(m) 43.E.3.Chall.93. 8.H.5.10.
(n) Mirror ubi supra. Brit. fol.12.11.Ass.36.8.H.4.2. 7.E.4.4.12.Ass.26.19.Ass. 6.40.Ass.10.25.E.3.c.3.
(o) 40.Ass.20.2.H.4.15. 10.H.6 Chall.40.7.H.6. 40.19.H.6.66.4.E.4.11. 7.E.4.4.
(p) 20.H.6.39 9.E.4.46. 35.H.6.19.H.6.3.H.6.24. 7.H.7.10.
(q) Lib.9.fo.71.Peacocks Case.
(r) Mirror, Bracton, Britton } ubi supra. 12.Ass.36. 26.Ass.56.28.Ass.19. 31.Ass.7.44.Ass.18.
(s) 13.H.4.13 11.R.2. Chall.164.
(t) Bracton, Fleta } ubi supra. 44.E.3.5.38. 44.Ass.23.8.E.3.25. 43.E.3.31.22.E.4.1. 38.H.6.6.43.E.3 Chall. 93.11.H.4.26.11.H.6.15. 32.E.3.Chall.189. 24.E.3.37.39.Ass.2. 20.Ass.11.43.Ass.46.
(u) 17.Ass.15.
(w) 8.E.3.39.20.H.6.39. 33.H.8.Dyer 48.
(x) 22.Eliz.Dyer 367. Bracton, Britton, Fleta } ubi supra.
(y) 49.E.3.1.
(a) 9.E.4.6.21.E.4.31. 22.E.4.3.14.H.6.2. 20.E.4.2.3.H.7.5. 22.Eliz.Dyer 367.
(b) Mirror cap 3. ordinance dattiant. Bract. lib. 4. fol. 185. Brit. fo. 134. 135. Fleta lib. 4. c. 8. 7. H. 6. 25.
(c) 9.H.7.3.10.H.7.20. 3.H.7.2.10.E.4.12.15.E. 4.18.12.Ass.23.
(d) 6.R.2.Chall. 141. 19.Ass.6.38.Ass.2. 11.R. 2.Chall.165.4.H.5. ibid. 153.

Propter delictum. (c) As if the Juror be attainted or convicted of treason, or felony, or for any offence to life or member, or in attaint for a false verdict, or for perjury as a witnesse, or in a conspiracie at the suite of the King, or in any suite (either for the King, or for any subject) be adjudged to the Pillory, tumbrell, or the like, or to bee branded, or to be fligatique, or to have any other corporall punishment whereby he becommeth infamous, (for it is a maxime in law Repellitur à sacramento infamis) these and the like are principall causes of challenge. So it is if a man be outlawed in trespasse, debt or any other action, for hee is Exlex, and therefore is not legalis homo. And old books have said that if he be excommunicated, he could not be of a Jury.

(c) Mirror, Bracton, Britton, Fleta } ubi supra. 11.H.4.41.12.H.4.19. 33.H.6.21.

(f) See the statutes of W.2. and Artic. supra cartas, what persons the Sheriffe ought to returne on Juryes. And see F.N.B. breve de non ponendis in Assesis & juratis, and the Register in the same writ. And see there what remedy the party hath that is returned against Law.

(f) W.2.ca.38.Artic. super cart.ca.9.F.N.B. 165.& 166.Registr.

It is necessary to be knowne the time when the challenge is to be taken. (g) First he that hath divers challenges must take them all at once, and the Law so requireth indifferent trialls, & divers challenges are not accounted double. (h) Secondly, if one be challenged by one party, if after he be tried indifferent, it is time enough for the other party to challenge him. (i) Thirdly, after challenge to the Array, and triall duely returned, if the same party take a challenge to the polls, he must shew cause presently. (k) Fourthly, so if a Juror be formerly sworn, if he be challenged he must shew cause presently, and that cause must rise since he was sworne. (l) Fiftly, when the King is party or in an appeale of felony, the defendant that challengeth for cause, must shew his cause presently. Sixtly, If a man in case of treason or felony challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. Seventhly, a challenge for the Hundred must bee taken before so many bee sworne, as will serve for hundredors, or else he looseth the advantage thereof.

(g) 9.E.4.16.10.H.5.3. 37.H.6.8.3.H.6.38. Brooke tit.chall.8. 7.H.6.40.14.H.7.5.6. (h) 9.E.4.16.27.H.8 2. (i) 43.E.3.Chall.93.20. E.3.ibid.116.22.E.4. ibid. 61.7.H.4.41.3.El. Dower, 201. (k) 22.E.4.1.9.H.5 6. (l) 1.H.5.10.38.Ass.22.

8. (m) In a writ of Right, the graund Jury must be challenged before the foure knights before they be returned in Court, for after they be returned in Court, there cannot any challenge be taken unto them.

(m) 7.H.4.20.15.E.4.1.

9. Nota (n) The Array of the Tales shall not bee challenged by any one party, untill the Array of the principall be tried, but if the plaintife challenge the Array of the principall, the defendant may challenge the Array of the Tales. After one hath taken a challenge to the poll, hee cannot challenge the Array.

(n) 9.E.4.27.9.H.5.11. 34.Ass.6.13.E.3. Chal.198

Now it is to be seene how challenge to the Array of the principall Pannell, or of the Tales, or of the polls shall be tried, and who shall be triors of the same, and to whom processe shall be awarded.

1 (o) If the plaintife alledge a cause of challenge against the Sheriffe, the processe shall be directed to the Coroners, if any cause against any of the Coroners, processe shall be awarded to the rest, if against all of them, then the Court shall appoint certaine Elisors or Eliors (so named ab eligendo) because they are named by the Court, against whose returne no challenge shall be taken to the Array, because they were appointed by the Court, but he may have his challenge to the polles; (p) Note, if processe bee once awarded for the partiality of the Sheriffe, though there be a new Sheriffe, yet processe shall never be awarded to him: for the entrie is, Ita quod vicecomes se non intromittat. But otherwise it is, for that hee was tenant to either partie, or the like.

(o) 18.E.4 8. (p) 15.H.7.9.14.H.7.31. 18.E.4.3.

2 (q) If the Array be challenged in Court, it shall be tryed by two of them that be impannelled to be appointed by the Court: for the triors in that case shall not exceed the number of two, unlesse it be by consent. But when the Court names two for some speciall cause alledged by either partie, the Court may name others, if the Array be quashed, then processe shall be awarded, ut supra.

(q) 29.Ass.3.19.H.6.48. 21.H.6.Chal.38.33.H.6. 21.4.E.4.17.43.E.3. Chal. 95.2.R.2.ibid.101.34.Ass. 6.27.Ass.28.43.Ass.26.

(r) If a pannell upon a Venire facias be returned, and a Tales, and the Array of the principall is challenged, the triors, which try and quash the Array, shall not try the Array of the Tales; for now it is as if there had beene no appearance of the principall pannell, but if the triors affirme the Array of the principall, then they shall try the Array of the Tales. If the plaintife challenge the Array of the principall, and the defendant the Array of the Tales, there the one of the principall, and the other of the Tales shall try both Arrayes. For other matter concerning the Tales see (s) in my Reports matters worthy of observation. (t) When any challenge is made to the polls, two triors shall bee appointed by the Court, and if they trie one indifferent, and he be sworne, then he and the two triors shall try another, and if another be tried indifferent, and he be sworne, then the two triors cease, and the two that be sworne on the Jury shall try the rest. (u) If the plaintife challenge ten, and the defendant one, and the twelfth is sworne, because one cannot try alone, there shall be added to him one challenged by the plaintife, and the other by the defendant. When the triall is to bee had by two Counties, the manner of the triall is worthy of observation, and apparent in our (w) books. (x) If the foure knights in the writ of right be challenged they shall try themselves, and they shall chose

(r) 9.E.4.46.19.H.6.48. 34.Ass.6.7.E.6.Dier.78. 9.H.5.11. (s) Lib.10.fo.104.105. Denbawds case. (t) 19.H.6.72.22.E.4. Chal.61.62. (u) 7.H.4.41. (w) 11.H.4.61.48.E.3.36. 11.H.4.63. (x) 22.E.3.18.39.E.3.25.

the graund Assise, and try the challenges of the parties. (y) If the cause of challenge touch the dishonor or discredit of the Juror, he shall not be examined upon his oath, but in other cases he shall be examined upon his oath, to informe the triors. (z) If an inquest bee awarded by default, the defendant hath lost his challenge, but the plaintife may challenge for just cause, and that shall be examined and tried.

Wherefoeber the plaintife is to recover per visum juratorum, there ought to be five of the Jury that have had the view, or knowne the land in question, so as he be able to put the plaintife in possession if he recover.

(y) 49.E.3.1.2.

(z) 2.H.4.14.4.E.4.3. 10.E.3.32.22.Ass.28.31. 21.H.6.56.16.Ass.1. 5.E.5.35.36.

In a Proprietate probanda, and a writ to inquire for waste, the parties have beene received to take their challenges (a) But passing over many things touching this matter, I will conclude with the saying of *Bracton, Plures autē aliæ sunt causæ recusandi juratores, de quibus ad præsens non recolo, sed quæ jam enumeratæ sunt, sufficiant exēpli causa. And so let us return to Litl.

(a) 8.H.5.tit.Chall.167. 2.H.4.3.34.E.3.Chall. 175.21.H.6.56.8.E.4.3. 16.E.4.1.

*Bracton lib.4.fo.185.

¶ *Devisneto, &c.* It should be Vicineto: Vicinetum is derived of this word Vicinus, and signifieth Neighbourhood, or a place neere at hand, or a neighbour place. And the reason wherefore the Jury must be of the neighbourhood, is for that Vicinus facta vicini præsumitur scire, all which is implied in this word (&c.)

¶ *Quod summoneat eos, &c.* Summoneo is compounded of Sub & moneo, & Euphoniæ gratia it is said summoneo, to warne or summon, as in this case the Sheriffe must warn or summon the Recognitors of the Assise to appeare before the Justices of Assise, &c. And it is truly said (b) that in this case Legitimam summonitionem recipere in propria persona ubicunque inventus fuerit in comitatu in quo fuerit res petita, qui quidem si non inveniatur, sufficit si ad domicilium fiat, dum tamen alicui de familia sua manifeste fuerit relata, &c.

(b) Bracton lib.5.fo.333. 334.Mirr.cap.2.Sect.19. Flera lib.6.cap.6. Brit.cap.121.

¶ *Per bonos summonitores.* Here two things are to bee observed. First, that the summoners must be Boni (id est) fide digni ut valeant legitimum testimonium perhibere, cum inde per Justiciarios fuerint requisiti. (c) And another saith, Fems, ne serfs, ne enfans, ne nul enfamys, ne nul que nest fife tenant, ne poet este bone summoner. 2. It is spoken in the plurall number, Per bonos summonitores, and therefore there must be two at the least. Nec sufficit quod summonitio fiat per unum tantum, &c. necesse est igitur quod per duos ad minus fiat, &c. There is also a summons of a Tenant in a reall action, whereof, and of Pernors and Veiors you shall reade (d) plentifully and plainely in our Bookes, whereunto being matter of course I referre you.

(c) Bracton, Britton, Fleta } ubi supra.
Bracton, Britton, Fleta } ubi supra.
Mirror

(d) Regist.Judicial.1.2. 107.43.E.3.32.24. E.3.35. 3.E.3.48.50.E.3.16. 2.H.6.1.b.F.N.B.97.

Item Summonitionum alia est Generalis, alia Specialis, whereof you shall finde excellent matter in our (e) old Bookes, where you shall also reade at large De Summonitione, Præsummonitione, & Resummonitione.

(e) Mirror, Bracton, Britton, Fleta } ubi supra.

¶ *Facere recognitionem.* Cognitio is knowledge, or knowledgement, or opinion, and recognition is a serious acknowledgement or opinion upon such matters of fact as they shall have in charge, and thereupon the Jurors are called Recognitores assisæ, Vide Sect.233. Recognitio taken for the confession of the Tenant.

¶ *Pannell,* is an English word, and signifieth a little part, for a Pane is a part, and a Pannell is a little part, as a Pannell of wainscot, a Pannell of a saddle, and a Pannell of Parchment wherein the Jurors names be written and annexed to the writ. And a Jury is said to be impannelled, when the Sheriffe hath entred their names into the pannell, or little peece of Parchment in Pannello assisæ.

Register 223.

¶ *Briefe de droit.* Breve de recto, writs of Right be of two natures, 1. a writ of Right, whereof Littleton here speaketh, which is the highest writ of all other reall writs whatsoever, and hath the greatest respect, &c. and the most assured and finall judgement, and therefore this writ is called a writ of Right right, & this in (f) old bookes is called Dreit dreit, and this writ Est darrein remedie de touts recoveries enter touts ordres des pleas, and the Jury in this writ is called Magna Assisa, or magna Juratа, as Littleton here saith. 2. writs of Right in their nature, as the Rationabile parte, and Ne injuste vexes.

(f) Bracton lib.5.fo.372. Britton fo.119.Fleta l.6. ca.1. Glanvil lib.1.c.4.5. &c.lib.2.ca.7.lib.12.ca.1.

¶ *De Recto.* Rectum, is a proper and significant word for the right that any hath, & Wrong or Injury, is in French aptly called Tort, because Injury and wrong is wrested or crooked, being contrary to that which is right and straight. Now the Law that is Linea recta est index sui & obliqui. And Britton * saith, that Tort a la ley est contrarye, and as aptly for the cause aforesaid is injury in English called wrong. And Injuria is derived of In and jus, because it is contrary to right, so as A faire tort is facere tortum, and Fleta saith, (g) Est autem jus publicum & privatum quod ex naturalibus præceptis aut gentium, aut civilibus est collectum, & quod in jure scripto jus appellatur, id in lege Angliæ rectum esse dicitur. And in the (h) Mirror, and other places of the law it is called Droit, as Droit defend, the Law defendeth.

*Britton fo.116. Fleta lib.2.ca.1.

(g) Fleta lib.5.ca.1.

(h) Mirror ca.2.Sect.16. & cap.5.Sect.2.

¶ *En le Register.* Register is a most ancient booke of the Common Law, and it is two

twofold, viz. Registrum brevium originalium, and Registrum brevium judicialium. It is a french word and signifieth a memoriall of writs. Sometimes the Register of originall writs is called Registrum cancellariæ, because all originall writs doe issue out of the Chauncery, as Extra officinam Justitiæ, for the antiquity and estimation of which booke, I referre the Reader to the Epistle before the tenth part of my Commentaries. 13.E.1.cap.24. Pl.Com.228.b.

¶ *Magna Assisa eligenda*, Is a Judiciall writ to the Sherife to returne foure lawfull Knights before the Justices, there upon their oathes to returne twelve Knights of the Vicinage to try the Mise in a writ of Right.

¶ *Assise de common de pasture, &c.* Of what things an Assise of Novel disseisin lay at the Common Law, and of what by the statute, you may reade at large in my (k) Reports in John Webbes Case, where the Authorities of Law are plentifully cited, and they and the statute well explaned. But since Littleton wrote, a man may have (l) an Assise of Novel disseisin, Assise of Mordanc' or any Præcipe quod reddat, Quod ei deforceat, writs of Dower, or other writs originall, as the case shall require, of Tythes, Pensions, or other Ecclesiasticall or Spirituall profit, if he be disseised, defored, wronged, or otherwise kept or put from the same, which by the Lawes and Statutes of the Realme are made temporall or admitted to be or abide in temporall hands, so as by the said act a Lay man having tythes or offerings, may either sue for the subtraction or with-holding of the same in the Ecclesiasticall Court, or at the Common Law at his election And seeing no speciall writ is given * by the statute, the party must have a generall writ of Assise de libero tenemento, and make a speciall pleint. But his Præcipe must be, Quod reddat omnes & omnimodas decimas majores, mixtas, & minutas, infra Dale quoque modo crescen' contingen' ac annuatim renovan', or the like, according to his case. (m) But neither Assise nor any Præcipe did lye of them as of tythes or any other Ecclesiasticall duty at the Common Law: for the Assise brought of the Tenth part of all manner of Corne growing in an hundred Acres of land after the tythes of the Parson taken, was a Lay profit Apprender, and no Ecclesiasticall duty.

(k) Lib.8.fol.45.
(l) 32.H.8.ca.7.
* 7.E.6.Dier.83.&c.
(m) 44.E.3.5. Vid.Regist.165. Vid.le briefe de indicavit.W.2. c.5. Conjunctim feoffatis ca.ultimo.

But tythes or other Ecclesiasticall duties, that came to the Crowne by the statutes (n) of 27.H.8. 31.H.8. 37. H. 8. and 1. E. 6. are by these statutes, and this of 32.H.8. and of 1. and 2. Ph. & Mariæ, in the hands of Lay men temporall inheritances, and shall bee accounted Assets: and husbands shall be Tenants by the Curtesie, and wives endowed of them, and shall have other incidents belonging to temporall inheritances, onely this Ecclesiasticall quality they have, that the owner or possessor thereof may sue for the subtraction of the same in the Ecclesiasticall Court.

Bracton lib.5.fol.402. Britton fol.260. Regist. fol.35. 4.E.3.27.29. 16.E.3.Quar.Imp.147. Vid.2.H.3.tit.Grant 89. (n) 27.H.8. of Monasteries not printed. 31.H.8.ca.13. 37.H.8.ca.4. 1.E.6.ca.14. 1.& 2.Ph.& Mar.ca.8. 2.E.3.ca.13.

But by another (o) statute, remedy is given as well to the Lay person, as to the Ecclesiasticall person for subtraction of all manner of prediall Tythes, and he shall recover the treble value if they be not justly divided or set forth, and albeit the treble value be not expressly given to the proprietary of the tythes, yet forasmuch as he is the party grieved, and he hath the property & interest in the tythes, the treble value is given to him, & whensoever a statute giveth a forfeiture or penalty against him which wrongfully detaineth or dispossesseth another of his duty or interest, in that case he that hath the wrong shall have the forfeiture or penalty, and shall have an action therefore upon the statute at the Common law, & the King shall not have the forfeiture in that case. And so it was (p) adjudged in the Exchequer upon conference with other Judges in an information for the treble value for not setting out of tythes in Iclington in the County of Cambridge. And if the proprietary will sue for such subtraction of tythes in the Ecclesiasticall Court, then he shall recover but the double value by the expresse words of the Act. wherein it is to be observed, that the Act of Parliament doth give a temporall remedy at the Common Law to Parsons and Vicars and other Ecclesiasticall persons for an Ecclesiasticall duty, and to Lay men proprietaries of tythes the like remedy, but as it hath beene said, they have election either to sue for the treble value at the Common Law, or for the double value in the Ecclesiasticall Court, or for subtraction of tythes there also.

(o) 2.E.6.ca.13.
(p) Pasch.29.Eliz. between the Queene and Wood in the Exchequer. and so it was resolved by all the Judges upon conference, Mich.4.Jac.Regis.

¶ *Assise de Mordancester.* Assisa mortis antecessoris. (q) This writ a man may have after the decease of his immediate Ancestor, as where his father, mother, brother, sister, uncle or aunt dye seised of any lands, and an estranger abate, &c.

(q) Britton fol.178.179. &c. Bracton lib.4. tract.3. per totum, fol.252.&c. Mirror ca.2.Sect.15. F.N.B.114.&c.

¶ *Assise de darreine presentment.* Assisa ultimæ præsentationis, whereof you shall reade (r) plentifully in our bookes.

(r) Britton ca.90 fol.222. Bract.lib.4.fo.238. Mirror ubi supra. F.N.B.195. Regist.ori.30.

To these may be added Assisa utrum, or Juris utrum, (s) which is the highest writ a Parson, Vicar, &c can have for the recovering of the Glebe land &c. in right of his Church. But it may be demanded wherefore these originall writs are called by the speciall name of Assises more than other originall writs: and here Littleton yeeldeth the reason, because that by these writs, it is commanded to the Sherife Quod summoneat 12. which is as much to say, as to summon a Jury. So as in these cases, there is a Jury returned the first day, and they are to

(s) Bracton fo.285.286. Britton ca.95.fo.134. Mirror ubi supra. F.N.B.48.49.

appeare as soone as the Defendant. And because by these writs a Jury is to bee returned, the Law calleth them Assises, Ab affectu, because an Assise (which in this sense signifieth a Jury) is to be returned. But beside the signification of the writ * of Assise whereof Littleton here speaketh, it signifieth the whole proceeding upon the writ.

* Mag. Chart. ca. 12. And W. 2. ca. 25.

In other originall writs regularly no Jury is to be returned before the appearance of the parties and an issue joyned between them, and therefore these other originalls are not called Assises.

¶ *Pur un ordinance.* Here Assisa signifieth an Ordinance, &c. Ordinance, Ordinatio is derived of the verbe ordinare, To ordaine or set in order. And note, an Act (r) of Parliament (as Littleton here proveth) is an Ordinance, for it sets downe orders which are to bee kept as Lawes: and so is Ordinatio Forestæ, Ordinatio de Inquisitionibus, and Ordinatio contra Servientes, and other Statutes many times called Ordinances, and it is said almost in every Act of Parliament, Be it therefore ordained, &c. by authority of this Parliament, or the like. But è converso, every Ordinance is not a Statute, as that of 8. H. 6. cap. 29. for every statute must be made by the King, with the assents of the Lords and Commons, and if it appeare by the act, that it was made by two of them onely, it is no statute.

(r) 19. H. 3. Juris utrum 16 39. E. 3. 1. 7. 42. E. 3. 38. 29. E. 3. 7. Regist. orig. 189. 33. E. 1. 5. R. 2. ca. 2. Vid. lib. 8. le Princes case.

yet divers Statutes say only Dominus Rex &c. & not Rex &c. which are adiudged Statutes. as 6: Ed: ca: 9: &c. & 1: E6: ca: 5. &c. by ye King & com. not mentioning ye Lords.

The example put by Littleton, is Assisa panis & cervisiæ, (s) This Ordinance was made at a Parliament holden anno 51. H. 3. and the like Ordinance was made, entituled Assisa cervisiæ, which you may see in old Magna Charta, fol. 57. b. (t) And so Assisa de Claredon, which was in 10. H. 2. and Assisa Forestæ, ordained in anno 34. E. 1. and such like. And aptly an Ordinance of Parliament Antiquity hath called an Assise, for that an Act of Parliament doth ordaine such a certaine order, as nothing can be done more or lesse by right. (u) And Fleta saith, Et habet Rex in potestate sua, ut leges & consuetudines & assisas in regno suo provisas & approbatas & juratas, &c. where Assises are taken for statutes, which are the effects of the Sessions of Parliament.

(s) Mir. ca. 1. Sect. 13. & ca. 4. de Articles de Eire. Bracton lib. 3. fol. 136.

(t) Stamf. fo. 118. Mir. ca. 2. Sect. 15. Hoveden 313. Regist. orig. 279.

(u) Flet. li. 1. cap. 17.

De ponderibus & mensuris, of Weights and Measures is a most necessary learning to bee knowne, and daily in use, but it belongeth not to this Treatise. In some other (if God so please) somewhat shall be said of them.

Sect. 235.

¶ *Et le tenant attorna.* Here it appeareth that an Attornament (that is, an Agreement to the Grant) is no seisin of the rent.

¶ *Il ne ad ascun remedie, &c.* which is as much to say, as hee hath not any remedy either at the common Law, or in any Court of equity, which is worthy of observation.

¶ *Voile doner al grantee un denier, ou un maile, &c. en noſme de ſeiſin de rent, &c.* Here it is to bee observed, that payment of any money in name of seisin of the rent, before any rent become due, is a good seisin of the rent to have an Assise when it is due, and that which is given in the name of seisin of the rent, worketh his

See more of this in the Chapter of Attornment. Sect. 563.

payment of rent of Inheritance shall not bind the Heir-law after ye Term determined, but ye case is not to be maintained ag. Lim. Rep. 6. fol. 57

¶ ITem ſi ſoit ſeignior & Tenant, & le Seignior granta le rent ſon tenant per ſon fait a un auter, ſavant a luy les ſervices, & l'Tenant atturna, ceo eſt un Rent Secke, come eſt dit adevant. Mes ſi l'rent a luy ſoit denie al prochein jour de payment, il ny ad aſcun remedie, pur ceo q̄ il naboit de ceo aſcun poſſeſſiō. Mes ſi le Tenant quaunt il atturna al grantee, ou apres, voile doner al grantee un denier, ou un maile, &c. en

ALſo if there bee Lord and Tenant and the Lord granteth the rent of his Tenant by Deed to another, ſaving to him the other ſervices, and the Tenant atturneth, that is a Rent ſecke, as it is aforeſaid. But if the rent be denied him at the next day of payment, hee hath no remedie, becauſe that he had not thereof any poſſeſsion. But if the Tenant when he atturneth to the Grauntee, or afterwards, wil give a penie or a halfe-penie to the Grantee in

noſme

10. Ass. 127

noſme de ſeiſin de le rent, donques ſi apres a le procheine jour de payment le rent a luy ſoit denie, il aver Aſſiſe de Novel Diſſeiſin. Et iſſint eſt lou hõe granta per ſon fait un annual rẽt iſſuant hors de ſa terre a un auter, &c. ſi le Grantor adonques ou apres paya al Grantee un denier, ou un mail en noſme de ſeiſin de le rent, donques ſi apres al procheine jour de payment le rent ſoit denie, le Grantee poet aver aſſiſe, ou auterment nemy, &c.

name of ſeiſin of rent, then if after at the next day of payment the Rent bee denied him, hee ſhall have an Aſſiſe of *Novel Diſſeiſin*. And ſo it is, if a man grant by his Deed a yearely Rent iſſuing out of his land, to another, &c. if the Grauntor then after pay to the Grauntee a penie or an halfe-pennie in name of Seiſin of the Rent, then if after the next day of payment the Rent be denyed, the Grauntee may have an Aſſiſe, or elſe not, &c.

effect to give ſeiſin, and yet is no part of the rent, nor ſhall be abated out of the rent: but you ſhall read more hereof hereafter, Sect. 565.

¶ *Un denier, ou un maile, &c.* Here by this (&c.) is implyed, that ſo it is of the gift of a Sheepe, or an Ore, or a Ring, or a paire of Gloves, or a pound of Pepper, or of any valuable thing.

¶ *Iſſint ſi home grant per ſon fait un annual rent iſſuant hors de ſon terre a un auter, &c.* By this (&c.) is implyed, that the grant and deliberis of the Deed is no ſeiſin of the rent: and that a ſeiſin in Law, which the Grantee hath by the grant, is not ſufficient to maintaine an Aſſiſe, or any other reall Action, but there muſt be an actuall Seiſin.

Sect. 236.

¶ Item de Rent ſecke, home poet aver Aſſiſe de Mortdauncester, ou Briefe de Ayel, ou de Coſinage, & touts auters manners dactions Reals, come la caſe giſt, ſi come il poet aver daſcun auter rent.

ALſo of Rent ſecke a man may have an Aſſiſe of *Mortdaunceſter*, or a Writ of *Ayel* or *Coſinage*, and all other manner of Actions realls, as the caſe lyeth, as hee may have of any other Rent.

¶ *Briefe de Ayel.* Breve de Avo. This writ lyeth where the Grandfather or Grandmother was ſeiſed of any Land in fee the day that hee dyed, and an eſtranger abate, the heire ſhall have this writ. (w) And if the great Grandfather, Beſaiel, Proavus, or great Grandmother Beſaicles, Proavia, be ſeiſed, as is aforeſaid, and die, &c. the heire ſhal have a writ de Beſaiel, proavo, or beſaicls, proavia, &c. Bract. li. 2. fo. 67. Brit. c. 89. & c. 76. Flet. li. 5. c. 7. & &c. F.N.B. 221.

(w) 6. E. 3. 34. 7. E. 3. 46. Regiſt. 226. F.N.B. 222. a. b. Brit. cap. 76.

¶ *Briefe de Coſinage.* Breve de Conſanguinitate. (a) This Writ lieth where the great Grandfathers father, Tritavus (id eſt) tertius avus, or abavus, (id eſt) avus avi was ſeiſed as is aforeſaid, or where grandfathers or grandmothers mother, &c. ut ſupr. And ſo it is of the ſeiſin of the brother of the grandfathers grandfather, &c. (a) Bract. li. 2. fol. 67. Brit. c. 89. & c. 76. Flet. l. 5. ca. 7. F.N.B. 221.

¶ *Rent Secke.* And ſo it is of a Rent charge to all reſpects.

¶ *Et touts auters manners dactions reals.* Hereupon ſome have gathered, that a man ſhall have a writ of Right of a rent ſecke, or of a rent charge, albeit they be againſt common right. But that which hath beene ſaid by Littleton of an Aſſiſe of Mortdaunceſter, a writ of Ayel, Coſinage, and other Actions realls, is to be underſtood after Seiſin had by ſome of the Anceſtors of the Demandant, for without an actuall ſeiſin, or a ſeiſin in Deed, none of theſe are maintainable. 15. E. 2. Hors de ſon fee 27. 3. E. 3. 35. 4. E. 3. droit. 31. F.N.B. 6. 14. E. 4. 9. Diverſity des Courts 137. 33. E. 3. Judgm. 250.

Sect.

Section 237.

¶ Item, ſont trois cauſes de diſſeiſin de Rent Service, ſ, Reſcous, Replevin, & Encloſure: Reſcous eſt, quaunt le Seignior en la terre tenus de luy diſtreine p ſ rent arere ſi le diſtres de luy ſoit reſcous: ou ſi le ſeignior vient ſur la terre, & voile diſtreyner, & le Tenant ou auter hõe ne luy voile ſuffer, &c. Replevin eſt, quant le Seignior ad diſtreiñ, et Replevin ſoit fait de les diſtreſſe per Briefe, ou per Plaint. Encloſur̃ eſt, ſi les Terres ou les Tenements ſont iſſint encloſes, que le Seignior ne poyt vener deins les tres ou Tenements pur diſtreyñ. Et la cauſe pur que tiels choſes iſſint faits sõt diſſeiſins al Seignior, eſt, pur ceo que per tiels choſes le Seignior eſt diſturbe de le mean per que il doit avoire & vener a ſon rent, ſ, de le diſtreſſe.

ALſo there be three cauſes of Diſſeiſin of Rent Service, that is to ſay, Reſcous, Replevin, and Encloſure: Reſcous is when the Lord diſtraineth in the Land holden of him for his rent behind, if the diſtreſſe be reſcued from him, or the Lord come upon the Land, and will diſtreine, and the Tenant or another man will not ſuffer him, &c. Replevin is, when the Lord hath diſtrained, and Replevin is made of the diſtreſſe by writ or by Plaint. Encloſure is, if the lands and tenements bee ſo encloſed, that the Lord may not come within the lands and tenements for to diſtrein. And the cauſe why ſuch things ſo done be Diſſeiſins made to the Lord, is for this, that by ſuch things the Lord is diſturbed of the meane by which he ought to have come to his rent, s. of the diſtreſſe.

18.E.3.3. 44.E.3.20.b. 20.H.7.1.2. 21.H.7.40.2. F.N.B.102.b. 6.H.6. Diſſeiſin 9. 4.E.2. Aſſ.43.8.E.1.ibid 416. W.2.c.6.12.H.7.Kelway 20.

Reſcous. Reſcuſſus is here deſcribed by Littleton: It is an ancient French word comming from Reſcourrer, (id eſt) Recuperare, that is, to take from, to reſcue, or recover. Reſcous is a taking away, and ſetting at liberty againſt Law, a diſtreſſe taken, or a perſõ arreſted by the Proces or courſe of Law. And all is one, as to the point of the Diſſeiſin to reſcue the diſtreſſe after it is taken, and before hand to reſiſt & withſtand the taking of it, but yet it is no Reſcous untill it be deſtreyned. And therefore you may make fire Diſſeiſins of a Rent ſervice: Reſcous of a diſtreſſe, reſiſtance to diſtreine, Replevin, Incloſure, Counterpleading of the title, and vouching of a Record, and failing. If the Tenant reſcue the diſtreſſe, and after is diſſeiſed of the Tenancie, yet the Aſſiſe lieth againſt him, for the diſſeiſin done of the Rent by the Reſcous.

Pur ſon Rent arere. Here Littleton decideth an antient queſtion in our Books, viz. That the Rent muſt be behind, or elſe the Tenant may make Reſcous: for if no rent be behind when the Diſtreſſe is taken, how can the Reſcous amoũt to a diſſeiſin of the rent whẽ none is due? And ſo it is, if the Tenant reſiſt the Lord to diſtreine, whẽ there is no rent behind, this can be no diſſeiſin of the rent for the cauſe above ſaid, and this (as it appeareth by Littleton) holdeth as well in caſe of a rent ſervice between Lord and Tenant, as in caſe of a Rent charge, &c. And ſo I heard Sir Chriſtopher Wray Chiefe Juſtice ſay, that he had adjudged it: And that which the Tenant may do when there is no rent behind, may a ſtranger doe, if his beaſts be diſtreined. If the Tenant tender the rent to the Lord when he is to take the diſtreſſe, if notwithſtanding the Lord will diſtreyne, the Tenant may make reſcous. If the rent of the Lord be behind, and the Lord diſtreine the Cattell of the Tenant in the high way within his fee, the Tenant may make Reſcous,

(p) 6.R.2. Reſcous 10.40. E.3.33.34.E.3.Reſcous 17. 22.H.6.2.b. 6.E.4 11.b. 7.E.4.20. 5.E.4.8. 34.H.6.47.F.N.B.102.E. 2.H.4.21.16.4.E.6.Diſtreſſe Br.24. 39.E.3.35. 39.H.6.7. Lib.4.fo.11. Bevils caſe.8.H.4.1.

9.E.4.24.

27.E.3.43. Vid.tit.Reſcous 14.

scous, for that it is defended by Law to distreine in the high way. And by the same reason if the Lord will distreyne averia carucæ, where there is a sufficient distresse to be taken besides, or if the Lord distraine any thing that is not distreynable either by the Common Law, or by any Statute, the Tenant may make rescous.

Note, there is a rescous in Deed and a rescous in Law: of a rescous in Deed somewhat hath already been spoken. A Rescous in Law is when a man hath taken a distresse, and the cattle distreyned as hee is driving of them to the Pound goe into the house of the Owner, if he that tooke the distresse demand them of the Owner, and he deliver them not, this is a rescous in Law, and so of the like. 2.E.3.Rescous 12.

And every word of Littleton is materiall, for he saith:

¶ *En la terre tenus de luy.* And therefore if the Lord distreyne out of his fee in Lands not holden of him, the Tenant may make rescous, unlesse it bee in some speciall Cases.

As if the Lord come to distreyne Cattle which he seeth then within his fee, and the Tenant or any other to prevent the Lord to distreine, drive the Cattle out of the fee of the Lord into some place out of his fee, yet may the Lord freshly follow, and distreyne the Cattle, and the Tenant cannot make rescous, albeit the place wherein the distresse is taken, is out of his fee, for now in judgement of Law the distresse is taken within his fee, and so shall the writ of rescous suppose. 44.E.3.10.6.R.2. Rescous 21.11.H.7.4. 21.H.7.40.34.H.6.18. 16.E.4.10.lib.9.fol.12. in case de avowrie.

But if the Lord comming to distreyne had no view of the Cattle within his fee, though the tenant drive them off purposely, or if the Cattle of themselves after the view goe out of the fee, or if the Tenant after the view remove them for any other cause than to prevent the Lord of his distresse, then cannot the Lord distreyne them out of his fee, and if hee doth, the Tenant may make rescous.

If a man come to distreyne for Damage Feasant, and see the beasts in his soyle, & the Owner chase them out of purpose before the distresse taken, the Owner of the soyle cannot distreyne them, and if he doth, the Owner of the cattle may rescue them, for the beasts must be Damage Feasant at the time of the distresse, and so note a diversitie. 16.E.4.10.2.E.2. avowrie 182.lib.9.ubi supra.

There is a diversity (a) between a warrant of Record, and a warrant, or an Authoritie in Law, for if a Capias be awarded to the Sheriffe to arrest a man for Felony, albeit the party be innocent, yet cannot hee make rescous. But if a Sheriffe will by authority which the law giveth him, arrest any man for felony which is not guiltie, he may rescue himselfe. (a) 4.H.7.20.tit.Justices de Peace 9.

¶ *Replevin*, (b) Is derived of Replegiare, to redeliver to the owner upon pledges or suretie. (b) Brit.fol.108.Fleta lib. 4.cap.1.Mirror cap.2. Sect. 15.

(c) Also to counterplead the Plaintife in an Assise by which hee is delayed, maketh him that pleadeth it a disseisor. Otherwise it is, if he had pleaded Nul tort, &c. (c)24.Ass.3.29.Ass.52. Fleta lib.4.cap.1. Britton fol.108.

¶ *Encloser*, Is here also described, and need no other explication, for the Lord cannot (d) breake open the gates, or breake down the Inclosures, to take a distresse, and therefore the Law accounts it a disseisin. But all these are intended by Littleton to bee disseisins after an actuall seisin had, and when the Rent is behind, otherwise none of these are disseisins at all. (d) 10.E.3.9.49.E.3.14. 7.E.3.3.11.H.7.28.8.Ass. 18.10.E.4.2.

But wherefore should a rescous of the distresse by the party himselfe, or a Replevin which is a redelivery of the distresse by the Sheriffe by the course of Law to the partie be any disseisin of the rent service? Littleton doth here yeeld the true reason, because that by the rescue, and by the suing of the replevin, the Lord is disturbed of the meane by the which hee ought to have and come to his rent, viz. of the distresse. Bract.lib.4.fol.161.204. Britton fol. 108. Fleta lib.4.cap.1.

And so it is of an Incloser, for hee that disturbes a man of the meane disseiseth him of the thing it selfe (c) As the turning of the whole streame that runnes to a Mill is a disseisin of the Mill it selfe. (e) 9.Ass.19.Mirror.ca.2. Sect.15.Brit.fol.108. 114. 118. 141.

So it is if a man be disturbed to enter and manure his Land, (f) this is a disseisin of the Land it selfe: For Qui adimit medium dirimit finem. And qui obstruit adium destruit commodum. (g) And therefore where it is said that a man shall not be punished for suing of writs in the Kings Court, be it of right or wrong, it is regularly true, but it fayleth in this speciall case of the writ of replevy for the cause aforesaid. (h) But Denier is no disseisin of a rent service without rescous or resistance. (f) 26.Ass.17.3.E.4.2.per Littl.49.E.3.14.b. (g) F.N.B.42.g.22.E.3.155. 43.Ass.40.43.E.5.20. faux judg.10.8.E.4 15. per Moyle.2.R.3.19. (h)3.E.3.75.8.H.6.11.

Sect.

Sect. 238.

Britton ubi supra. Fleta lib. 4 cap. 1.

CSont 4. *causes de disseisin de Rent Charge.* And you may adde a fifth, viz. Resistance to Distreine, Counterpleading and Vouching a Record and fayler thereof, as hath beene said before. 160. b.

CEt sont 4. causes de disseisin de rent charge, scilicet, Rescous, Replevin, Enclosure, & Denier, car Denier est un disseisin de Rent charge, come est avandit de rent Secke.

AND there bee foure causes of disseisin of a Rent Charge. *scz.* Rescous, Replevin, Inclosure, & Deniall. For Denyall is a disseisin of a Rent Charge, as is said before of a Rent Secke.

14. E. 44. 35. H. 6. 7. 3. Ass. 8. 12. E. 3. 9. 40. E. 3. 24. 3. H. 6. 35. 3. E. 3. 75. 29. Ass. 51. 39. Ass. 4. 40. Ass. 3. 13. E. 1. Ass. 404. 3. Ass. 8. E. H. 6. 41. 18. E. 3 Ass. 78.

CDenier. Deniall is a disseisin of a Rent Charge, as well as of a Rent secke, albeit hee may distreine for the Rent Charge, as well as for a Rent Service. Nota, That when Books say that a detainer of a Rent Charge or Secke is a Disseisin, it must be intended upon a demand made.

If there be two Joyntenants, and the grantee of a Rent charge distreine for the rent, & one of them make Rescous, they are both disseisors, for a distresse for the rent is a demand in Law, and then the Non-payment is a deniall & a disseisin, but he that made the Rescous is onely the Disseisor with force.

Sect. 239.

49. E. 3. 15. 29. Ass. 9. 37. Ass. 7. 10. E. 3. 19. 33. H. 6. 35. 35. H. 6. 7. b.

CThe reason wherefore Inclosure is a disseisin of a Rent Secke, is because the Grantees cannot come upon the land to demand it.

CEt deux sont causes de disseisin de Rent Seck, cestascavoir, denier & enclosure.

AND there be two causes of disseisin of a Rent Secke, that is to say, deniall and inclosure.

Sect. 240.

(*) Fleta lib. 1. cap. 42. 49. E. 3. 14. 49. Ass. 5. 22 Ass. 42.

CForstalla. (*) Forestellamentum, signifieth Obtrusionem viæ vel impedimentum transitus &c.

CVove force & armes. Vi & armis.

(i) Vide Sect. 431.

Force, vis in (i) the Common Law is most commonly taken in ill part, & taken for unlawfull violence, for Maxime paci sunt contraria vis & injuria. And therefore Britton said well, speaking in the person of the King, Nous voloms que tours gens pluis usseant judgement que force. Arma, Armes in the Common law signifieth any thing that a man striketh or hurteth

Britton

CEt il semble que il y ad un auter cause de disseisin de touts les trois services avantdits, cestascavoir, si le seignior soit en alant a la terre tenus de luy pur distreyner pur le Rent arere, & le Tenant ceo oyant, luy encounter, & luy forstala la voy ovesque force & armes, ou luy manace en tiel forme que il ne osast

CAND it seemeth that there is another cause of disseisin of all the three services afore said, that is, if the Lord is going to the Land holden of him for to distreine for the Rent behind, and the Tenant hearing this, encountreth with him, forestalleth him the way with force and armes, or menaceth him in such forme, that

bener

vener a ſa terre pur diſtreiner p̄ ſon rent arere pur doubt de mort, ou mutilation de ſes members, ceo eſt vn diſſeiſin, pur ceo que le Seignior eſt diſturbe de le meane, per que il doit vener a ſon rent. Et iſſint eſt ſi p̄ tiel forſtalement ou menace, celuy que ad vn rent charge ou rent ſecke eſt forſtalle, ou ne oſa ſt vener a la terre a demaunder le rent arere, &c.

hee dare not come to the Land to diſtreine for his Rent behinde, for doubt of death, or bodily hurt, this is a diſſeiſin, for that that the Lord is diſturbed of the meane whereby hee ought to come to his rent. And ſo it is if by ſuch foreſtalling or menacing, hee that hath rent charge or rent ſecke is foreſtalled, or dare not come to the land to aske the rent behinde, &c.

Withall; (k) Omnes illos dicimus armatos qui habent cum quo nocere poſſunt. Telorum autem appellatione omnia in quibus ſinguli homines nocere poſſunt accipiuntur. Sed ſi quis venerit ſine armis & ipſa concertatione ligna ſumpſerit, fuſtes & lapides, talis dicetur vis armata, ſed ſi quis venerit cum armis, armis tamen ad dejiciendum non uſus fuerit, & dejecerit, vis armata dejicitur eſſe facta, ſufficit enim terror armorum ut videatur armis dejeciſſe. And, Armorum quædam ſunt tuitionis (& quod quis ob tutelam corporis ſui vel ſui juris fecerit, juſte fecſſe videtur) quædam pacis & Juſtitiæ, quædam perturbationis pacis, & injuriæ, quædam uſurpationis rei alienæ.

(k) Bracton lib. 4. fo. 162. & lib. 3 fol. 144. Fleta lib. 4. cap. 4.

Againe, Armorum quædam ſunt moluta, & quædam quæ faciunt Bruſuram, &c. Arma moluta plagam faciunt, ſicut gladius, biſacuta, et hujuſmodi, ligna, verò et lapides Bruſuras, orbes, et ictus, etc. To conclude it is, it is truly ſaid, that Armorum appellatione non ſolum ſcuta et gladii et galeæ continentur, ſed et fuſtes et lapides, as the Poet ſaith:

Jamque faces et ſaxa volant, furor arma miniſtrat. Virgil. 1. Æneid.

Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad ſumendam vindictam, ſed ad propulſandam iujuriam.

¶ *Pur doubt de mort & mutilation de ſes members.* For it muſt not be Vagus & vanus timor, ſed talis qui cadere poſſit in virum conſtantem, & non in hominem vanum & meticuloſum, talis enim debet eſſe metus qui in ſe continet mortis periculum & corporis cruciatum. Littleton here ſaith it muſt be for feare of death, * or mutilation of members. Et nemo tenetur exponere ſe infortuniis & periculis. And therefore a foreſtalement with ſuch a menace is a diſſeiſin, not onely (ſaith Littleton) of a Rent ſervice, but alſo of a Rent charge and Rent ſeck. Theſe be all the diſſeiſins of a rent that our Author ſpeakes of. See hereafter (l) where a diſſeiſin ſhall be by way of admittance of the owner of the rent. And Littleton doth adde the binding reaſon in caſe of foreſtalment, becauſe the Lord is diſturbed of the meane by which he ought to come to his Rent, whereof there hath beene ſpoken ſufficient before, as well in caſe of the Rent charge and Rent ſecke, as of the Rent ſervice.

Bracton lib. 2. 16. Britton fol. 19. & 88. Fleta lib. 3. ca. 7.

* See of this in the Chapter of Deſcents.

49. E. 3. 14. 49. Aſſ. 5. 29. Aſſ. 49. &c.

(l) Vide Sect. 585.

¶ *&c.* Of the (&c.) in the end of this Section, and what is implyed therein, ſufficient hath beene ſpoken before.

Now hath Littleton ſpoken of remedies for the recovery of the arrerages of rents. But ſince Littletons time a right profitable ſtatute * in the 32. yeare of H. 8. hath been made for the recovery of arrerages of rents in certaine caſes where there lay no remedy at the Common Law, and giveth further remedy in ſome caſes where at the Common Law there was ſome remedy, which Statute hath beene well and beneficially expounded, and hereupon eight things are to be obſerved. First, when Littleton wrote, the Heires, Executors or Adminiſtrators of a man ſeiſed of a Rent ſervice, Rent charge, Rent ſecke, or Fee farme in fee ſimple or fee taile, had no remedy for the arrerages incurred in the life of the owner of ſuch rents: But now a double remedy is given to the Executors or Adminiſtrators for payment of debts &c. viz. either to diſtreine, or to have an action of debt.

* 32. H. 8. cap. 37.

Lib. 4. fol. 49. 50. 2. Ognells caſe. 40. E. 3. Execution 98. 45. E. 3. lib. 7. 5. H. 6. 43. 14. H. 8. 20. 19. H. 6. 43. 34. H. 6. 20. 32. E. 3. Dett. 9. 9. H. 7. 17. 19. E. 3. Juriſdiction 23.

2 That the preamble of the ſtatute concerning Executors or Adminiſtrators of tenant for life is to be intended of Tenant pur auter vie, ſo long as ceſtuy que vie liveth, who are alſo holpen by the ſaid double remedy: but after the eſtate for life determined, his Executors or adminiſtrators might have had an action of debt by the Common Law, but they could not have diſtreined

distreyned, which now they may doe by force of this statute, for in that point it addeth (m) another remedy, then the Common Law gave.

(m) 23.Eliz. Dier.375.

3. If a man make a Lease for life or lives, or a gift in taile reserving a rent, this is a Rent service within this statute.

4. The distresse is the more plaine & certain remedy, than the action of debt, for the action of debt must be brought against them that tooke the profits when the rent became behinde, or against their Executors or Administrators, but the distresse may be taken upon the land, be it either in the Tenants owne hands or in the hands of any other that claimes by or from him, (that is by interpretation under him) by purchase, gift or descent, and these words, Claiming onely by & from him, are to be understood claiming onely from or under him by purchase, gift, or descent, and not paramount or above him, as the Lord by escheate claimeth not under the tenant by purchase, gift, or descent, but by reason of his seignior which is a title paramount.

26.E.3.64.11.H.4.fol. ultimo. Ognels case. ubi supra. & lib. 7. fol. 39. b. Lillingtons case.

5. If there bee Lord and Tenant, and the rent is behinde, and the Lord grant away his Seignior, and dyeth, the Executors shall have no remedy for these arrerages, because the grantor himselfe had no remedy for them when hee dyed in respect of his grant, & the statute is (in like manner as the Testator might or ought to have done) Et sic de similibus, for the act giveth no remedy when the Testator himselfe hath dispenced with the arrerages or had no remedy when he dyed.

6. If the Tenant make a lease for life the remainder for life, the remainder in fee, the Tenant for life payes not the rent due to the Lord, the Lord dyeth, the Tenant for life dieth, the Executors cannot distreine upon him in remainder, because he claimes not by or from the tenant for life. And so it is of a reversion for the cause aforesaid. But if a man grant a Rent charge to A. for the life of B. and letteth the lands to C. for life, the remainder to D. in fee, the rent is behinde by divers yeares, B. dyeth, & after C. dyeth, A. may distrein D. in remainder for all the arrerages, by the latter branch of the Statute of 32.H.8. and this diversity riseth upon the severall pennings of the former branch and of this later, which you may reade in the Statute it selfe, and so expounded and adjudged (o) in Edridges case, and the latter clause giveth the lesser estate the greater remedy.

(o) Lib.5.fo.118. Edridges case.

7. For the Arrerages of a Nomine pœnæ, and for relefe, or for aid, Pur faire fits chivaler, or Pur file marier, this Statute * giveth no remedy. For, for the arrerages of the Nomine pœnæ, the Grantee himselfe may have an action of debt, and consequently his Executors or Administrators, and yet the Nomine pœnæ as an incident to the rent shall descend to the heire. For relefe the Lord cannot have an action of debt but distreine, but his Executors by (p) the Common Law shall have an action of debt, for it is no rent but a casuall improvement of services for the said Aides, if the Lord doth levy them, the sonne and the daughter respectfully shall have an action of debt against the Executors or Administrators of the Lord, and if they have nothing, then against the heire, but this is by the Statute (q) of W 1. Note that all manner of arrerages of rents issuing out of a free hold or inheritance, whether they bee in money or corne, cattell, fowle, pepper, comine, victuall, spurres, gloves, or any other profit to be delivered or yeelded, & whether they be annuall or every 2. 3. or 4. yeares, &c. or the like, are within this statute, but work dayes, or any corporal service or the like are not within this statute.

*40.E.3.3.b.11.H.4. 35.14.E.4.4.20.E.7.1.2. 28.H.8.Dier 24.
(p) 34.E. 1. Avowry 233. F.N.B.122. 10. H.6.11. 11.H.6.8. Mich.32. H. 8. Rot. 429. Leakes case. Ognels case ubi supra. 3.E.3.Debt 157.
(q) W. 1. ca. 36. F. N. B. 82. 122.

8. A feme sole is seised of a rent in fee, &c. which is behinde & unpaid, shee taketh husband, the rent is behinde again, the wife dyeth, the husband by the Common Law should not have the arrerages growne due before the mariage, but for the arrerages become due during the coverture the husband might (r) have an action of debt by the Common Law, but now this statute * by a particular clause giveth the husband the arrerages due before mariage, and the said double remedy for the same, and that he may distreyne for the arrerages growne due during the coverture, so it giveth him that which he could not have before, and further remedy for that, which the Common Law gave him, and so it hath beene (s) adjudged.

Co: Ent. 119. b

(r) 26.E.3.64.10.H.6.11. 22.H.6.25.F.N.B. 121.

The Bishop of (t) Norwich had the first fruits of all the Clergy within the Diocese at every avoydance, the Church became void, & another Parson became Incumbent, who paid the Bishop parcell of his First-fruits according to the taxation of the Church, and for the rest he had a day given unto him to pay it, the Bishop dyed, the residue was not payd, whereupon his Executors brought an action of debt, and it is adjudged that no action doth lie, because it is a meere spirituall thing and no lay contract, and therefore the Court had no jurisdiction to hold plea of it. I have beene the longer in the exposition of the said Statute, for that it is a generall case, and doth concerne most part of the Subjects of England.

(s) Hill.17.Eliz.Rot.457. inter Sharpe & Pole. Vide Ognels case ubi supra.
(t) 19.E.3.Jurisdict. 22.

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Finis Libri secundi.

THE

THE THIRD BOOKE

Of the first part of the Institutes of the Lawes of England.

Chap. 12. Of Parceners. Sect. 241.

¶ Parceners sont en deux maners, ceastascavoir, parceners solonqz le course del cõmon ley, & parceners solonqz custom. Parceners solonque le course del common ley sont, lou hom ou feme seisie de certaine terres ou tenements en fee simple, ou en taile, nad issue forsqz files et devie, et les tenements discendont a les issues, et les files entront en les terres ou tenements issint

Parceners are of two sorts (to wit) Parceners according to the course of the Common Law, and Parceners according to the custome. Parceners after the course of the Common Law are, where a man or woman seised of certaine lands or tenements in fee simple or in taile, hath no issue but daughters & dieth, and the tenements descend to the issues, and the daughters enter into the lands or tenements

Our Author having treated in his two former Bookes, first of estates of Lands and tenements, and in his second booke of Tenures whereby the same have beene holden: Now in his third booke doth teach us divers things concerning both of them, as first the qualities of their estates. 2. In what cases the entry of him that right hath may bee taken away. 3. The remedies, and in what cases the same may be prevented, or avoyded. 4. How a man may bee barred of his right forever, and in what cases the same may be prevented or avoyded. For the first, hee having spoken of sole estates divideth the quality of estates into Individed, & Conditionall. Individed, into coparcenary, joyntenancy, and tenancy in common. Coparcenary, into Parceners by the

:: v. apres.

Vide Sect. 385.

Common Law, and Parceners by the Custome. and hee beginneth his third book with Parceners claiming by descent, which comming by the Act of Law, and right of bloud, is the noblest and worthiest meanes whereby lands doe fall from one to another. Conditional, into conditions expresse or in deed, and conditions in Law. Conditions in deed, into Gages, which he divideth into Vadia mortua, and Vadia viva. Vadia mortua, so called because either money or land may bee lost: and Viva, because neither money nor land can be lost, but both preserved. Then speaketh he of Descents, whereby the entry of him that right hath may be taken away.

And next to that of the remedy how to prevent the same, viz. by continuall claime. Then he teacheth how a man having a defeasible or an imperfect estate, may perfect and establish the same by three meanes, viz. by Release, by Confirmation, and Attournment, where that is requisite.

Having spoken of a Descent, being an act in Law which taketh away an entry, he doth then speake of a discontinuance, the act of the party, whereby the entry of them that right have shall be taken away. And next unto that he teacheth in what case the same may be avoyed by Remitter. After he had treated of descents and discontinuances, which take away entries, but barre not Actions, Lastly, he setteth forth the learning of warranties, (a curious and cunning kind of learning I assure you) whereby both Entry, Action, and right may be barred, and the remedies how they may be prevented before they fall, and in what cases they may bee avoyded after they be fallen. And thus have you an account of the thirteene severall Chapters of his third book. And now his method being understood, let us heare what our Author will say unto us concerning Parceners.

discendus a eux, donques eels sont appels Parceners, & quaunt a files eels sont forsq; un heire a lour ancestor. Et eels sont appel Parceners, p̃ ceo que per le briefe q̃ ẽ appel Briefe de Partitione faciend', la ley eux voet coherc̃ q̃ partitiõ serra fait enter eux. Et si sont deux files al queux les terres discendont, donque eels sont appels deux Parceners, Et si sont trois files, donque eels sont appels trois Parceners, Et si quater files, quater Parceners, & issint ouster.

so descended to them, then they are called Parceners, and be but one heire to their Ancestour. And they are called Parceners, because by the Writ which is called *Breve de participatione faciendâ*, the Law will constraine them, that partition shall be made among them: and if there be two daughters to whom the land descendeth, then they be called two Parceners, and if there bee three daughters, they be called three parceners, and foure daughters, 4. Parceners, and so forth.

¶ *Et quant a files eels sont forsque un heire a lour* (a) *ancestor.* This is falsely printed, for the originall is, Et quanque files eels sont, eels sont parceners, & sont forsque un heire a lour aunceſtor.

(a) Bract. li. 2. fo. 66. 71. &c. & 75. &c. & lib. 5. fo. 443. Brit. fo. 58. 112. 128. 183. 184. 185. 189. 193. Flet. lib. 5. ca. 9. l. 6. ca. 47. Glan. l. 7. c. 3. & l. 13. c. 11.

¶ *Parceners.* (b) Jus descendit quasi uni hæredi propter juris unitatem, sicut sunt plures filiæ, &c. & ubi omnes simul & in solidum hæredes sunt, plures cohæredes sunt quasi unum corpus, propter unitatem juris quod habent. whereupon it followeth, that albeit where there bee two Parceners, (c) they have moities in the Lands descended to them, yet are they both but one Heyre, and one of them is not the moity of an Heire, but both of them are but unus hæres.

(b) Bract. li. 2. fo. 66. 75. Flet. ubi supr. Brit. ubi sup. & Statut. de Hibern.

(c) Vide Sect. 8. vers. fin.

And it is to be observed, that there is a diversity betweene a descent which is an act of the Law, and a purchase, which is an act of the party. (d) For if a man bee seised of lands in fee, and hath issue two daughters, and one of the daughters is attainted of felony, the Father dieth, both daughters being alive, the one moitie shall descend to the one daughter, and the other moitie shall escheat.

(d) Flet. lib. 5. c. 2. 9. Flet. lib. 6. ca. 47.

But if a man make a lease for life, the remainder to the right heires of A. being dead, who hath issue two daughters, whereof the one is attainted of Felony, in this case some hath said that the remainder is not good for a moitie, but voyd for the whole, for that both the daughters should have beene (as Littleton saith) but one heire.

A man

A man makes a gift in taile, reserving two shillings rent to himselfe during his life, and if he die his heire within age, then reserving a rent of twenty shillings to his heires for ever, he dieth having issue two daughters, the one of full age, the other within age, in this case the Donee shall hold by fealty onely, insomuch as the one daughter as well as the other is his heire, & both of them (as Littleton saith) make but one heire, ergo his heire is not within age, neither is his heire in that case of full age. But if the reservation had been, and if he die, his heire neither being within age, nor of full age, &c. in this case the reservation had beene good, and if it doth not begin in his next heire, it shall never begin as this case is, for that the precedencie is not performed. (c) But yet if one of them be of age, & the other within age, she shall have her age and other priviledges & advantages that an heire within age shall have, & when they are demandants, for the nonage of the one, the Paroll shall demurre against them both. (f) Sunt autem plures participes quasi unum corpus in eo quod unum jus habent, & oportet quod corpus sit integrum, & quod in nulla parte sit defectus. And when the right heire doth claime by purchase, he must be (say they) a compleat right heire in judgement of Law. And therefore if lands be given to a man & to the heires females of his bodie, and he hath issue a son and a daughter, and dieth, the daughter shall have the land by descent, but if a remainder be limited to the heires females of the bodie of I.S. and he hath issue a sonne and a daughter, his daughter shall never take it by purchase, for that she is not heire female of the body of I.S. because he hath a sonne.

(c) Temps E.1.Age 128. 8.E.2.Judgement 240. 30.E.3.7. 44.E.3.Age 47. 26.Ass.65. 13.E.3.Age 51. 28.Ass.22. 19.Ass.25.57. 34.H.6.4. Ass.17.

(f) Fleta lib.5.ca.9. & li.6. cap.47.

If a man give lands to another, & to the heires males of his body, upon condition, that if he die without heire female of his body, that then the Donor shall re-enter, this condition is utterly voyd, for he cannot have an heire female, so long as he hath an heire male.

And as they be but one heire, and yet severall persons, so have they one entire freehold in the land, as long as it remaines undivided in respect of any strangers Præcipe. (g) But between themselves to many purposes they have in judgemēt of law severall freeholds, for the one of them may infeoffe another of them of her part, and make liverie. (h) And this Coparcenarie is not severed or divided by law, by the death of any of them, for if one die, her part shall descend to her issue, and one Præcipe shall lie against them, for they shall never joyne as heires to severall Auncestors in any action Auncestrell, but when one right descends from one Auncestor: and then propter unitatem Juris, though they be in severall degrees from the common Auncestor, yet shall they joyne. But the issues of severall Coparceners, because severall rights descend, shall never joyne as heires to their mothers, and yet when they have recovered, a writ of Partition lieth betweene them.

(g) 10.E.4. 17.E.3.46.

(h) 37.H.6.8. 19.H.6.45.

Vid.Sect.313.

For example, (i) If a man hath issue two daughters, and is disseised, & the daughters have issue and die, the issues shall joyn in a Præcipe, because one right descends from the Auncestor, & it maketh no difference whether the common Auncestor being out of possession, died before the daughters, or after, for that in both cases they must make themselves heirs to the grandfather which was last seised, & when the issues (k) have recovered they are coparceners, and one Præcipe shall lie against them. And likewise if the issues of two Coparceners which are in by severall descents, be disseised, they shall joyne in assise. But in the same case, if the two daughters had beene actually seised, and had beene disseised, after their deceases the Issues shall not joyne, because severall rights descended to them from severall Auncestors: and yet when they have severally recovered, they are Coparceners, and one Præcipe lieth against them, and a release made by one of them to the other is good. And so note a diversity inter descensum in capita, & in stirpes.

(i) 7.E.3.30.34. 48.E.3.14. 24.E.3.13. F.N.B.221. 35.H.6.23. 27.E.3.89. 31.H.6.14.b.

(k) 37.H.6.8. 9.E.4.13.b. 42.E.3.16.17.

And the Statute of Glouceſter cap.6. made Anno 6.Edw.1. speaketh, Si home murge, &c. If a man dieth: so as that Statute extendeth not but where one dieth and hath divers heires, whereof one is sonne or daughter, brother or sister, nephew or neece, and the others bee in a further degree, all their heires from henceforth shall have their recovery by a writ of mort-dauncestor. And this seemeth to me to be the common Law, for Bracton who writ before this statute, saith, (l) In casu cum fit assisa mortis antecessor' conjungenda cum consanguinitate, non erit postea recurrendum ad præcipe de Consanguinitate, sed ad assisam mortis, quia persona quæ propinquior est, & facit Assisam, & trahit ad se personam & gradum remotiorem ut ubi potius procedat Assisa quam præcipe, quia id quod est magis remotum, non trahit ad se quod est magis junctum, sed è contrario in omni casu. And herewith agreeth the most of our (m) Bookes: and two coparceners shall have a writ of Aycl, and by their count suppose the common Auncester to bee grandfather to the one, and great Grandfather to the other.

2 Rol. 307.

2 Rol. 308. inf. 166.b.

(l) Bracton lib.4.254.b. Britton fol.181.182.& 178.204. Fleta lib.5.cap.1. & 2.& 9.in fine.

(m) 19.E.3.cit. Joyndre in Action 31.7.E.3.30.& 34. 27.E.3.89. 48.E.3.14. 24.E.3.13. F.N.B.221. Register. Vide 32.E.1.Joindre in Action 34.13.E.3.ibid.27. Temps E.3.ib.35. 30.E.1.ib.36. 25.H.6.23.

I have beene the longer herein, for that this Inheritance of Coparceners is the rarest kind of Inheritance that is in the Law.

Furthermore it is to be observed, That herein also in case of coparceners, (n) sometimes the descent is in Stirpes, (viz.) To Stockes or Roots, and sometime in Capita, To Heads: As if a man hath issue two daughters and dieth, this descent is in Capita, viz. that every one shall inherit alike, as Littleton here saith. But if a man hath Issue two daughters, and the

(n) Bracton lib.2.66. Britton cap.71. Fleta lib.5.cap.9.& 6. cap.47.

the eldeſt daughter hath iſſue three daughters, and the youngeſt one daughter, all theſe foure ſhall inherit, but the daughter of the youngeſt ſhall have as much as the three daughters of the eldeſt, Ratione ſtirpium, and not Ratione capitum, for in judgement of Law every daughter hath a ſeverall Stocke or Root.

Alſo if a man hath iſſue two daughters, and the eldeſt hath iſſue divers ſonnes and divers daughters, and the youngeſt hath iſſue divers daughters, the eldeſt ſon of the eldeſt daughter ſhall onely inherit, for this deſcent is not in Capita, but all the daughters of the youngeſt ſhall inherit, & the eldeſt ſon is Coparcener with the daughters of the youngeſt, & ſhall have one moitie, (viz.) his mothers part: ſo that men deſcending of daughters may be coparceners, as well as women, and ſhall joyntly implead and be impleaded, as is aforeſaid.

(o) If there be two Coparceners, and the one bring a Rationabili parte or a Nuper obiit againſt the other, the Defendant claime by purchaſe, and diſclaime in the blood, the Plaintife ſhall have a Mordaunceſter againſt her as a ſtranger for the whole.

(o) 20.E.2.Nuper ob.14. F.N.B.197. 7.E.3.13.

¶ *Parceners ſont en deux manners.* Here Littleton doth divide Parceners, and herewith doe agree the ancient bookes of Law. *

Bract.lib.2.fol.66.71. &c. Brit.ca.71. Fleta li.5.c.9.

¶ *Et ils ſont appels Parceners, &c.* Parceners, Participes, Et dicuntur Participes, quaſi partis capaces, ſive partem capientes, quia res inter eas eſt communis ratione plurium perſonarum. This Tenancie in the ancient bookes of Law is called Adæquatio, and ſometime Familia hirſciſcunda, an Inheritance to be divided, and many times Parceners are called Coparceners.

(p) Regiſt.Orig.75.316. Regiſt.Jud.80 Brit.ubi ſup. Flet.ubi ſu. Bract.ubi ſupra, & li.5.fo.443.b.

¶ Breve de Participatione facienda. This is falſe printed, and ſhould be, De Partitione facienda, a writ whereby the coparceners are compelled to make partition. Item eſt alia Actio mixta, quæ dicitur Actio Familiæ hirciſcundæ, & locum habet inter eos qui communem habent hæreditatem, &c. Et locum habet, ut videtur, inter Cohæredes, ubi agitur de proparte ſororum, vel inter alios ubi res inter partes & Cohæredes dividi debeat, ſicut ſunt plures ſorores, quæ ſunt quaſi unus hæres, vel inter plures fratres, qui ſunt quaſi unus hæres ratione rei quæ diviſibilis eſt inter plures maſculos, &c.

¶ *Des terres & tenements.* It is to be conſidered of what Inheritances daughters ſhall be Coparceners, and how and in what manner partition ſhall be made betweene them, wherein it is to be obſerved, That of Inheritances ſome bee entire, and ſome be ſeverall: againe, of entire, ſome be diviſible, and ſome be indiviſible. And here it appeareth by Littleton, That Parceners take their appellation, becauſe they are compelled to make partition by writ of Partitione facienda; where note, that Littleton alloweth well to finde out the true derivation of words, as often hath beene and ſhall be obſerved.

If a Villeine deſcend to two Coparceners, this is an entire Inheritance, and albeit the Villeine himſelfe cannot be divided, yet the profit of him may be divided, one Coparcener may have the ſervice one day, one weeke, &c. and the other another day or weeke, &c. and for the ſame reaſon a woman ſhall be endowed of a Villeine, as before it appeareth in the chapter of Dower. Likewiſe an Advowſon is an entire Inheritance, (q) and yet in effect the ſame may be divided betweene coparceners, for they may divide it to preſent by turnes.

(q) 13.E.2.tit.Quar.Imp. 170. 17.E.3.38. Fleta li.5. c.9. Mir.cap.2.Sect.17.

A Rent charge is entire, and againſt common right, (r) yet may it be divided betweene Coparceners, and by act in law the Tenant of the land is ſubject to ſeverall diſtreſſes, and partition may be made before ſeiſin of the rent.

(r) 44.E.3.tit.Partic.6. & tit.Avowrie 75. 2.H.6. fol.11.

Entire inheritances not diviſible, we finde divers in our bookes, and ſome inheritances that are diviſible, and yet ſhall not be parted or divided betweene coparceners, as hereafter ſhall appeare. 165. a.

Glerux aurea? vid:165:a.

(t) If a man have reaſonable Eſtovers, as Houſebote, Heybote, &c. appendant to his freehold, they are ſo entire as they ſhall not be divided betweene coparceners. (t) So if a Corodie incertaine be granted to a man and his heirs, and he hath Iſſue divers daughters, this Corodie ſhall not be divided betweene them, but of a Corodie certaine, Partition may be made.

(t) 2.E.2.tit.Dower 123. (t) 17.E.2. nuper obiit 12. 36.E.2.ibid.11. 5.Mariæ Dier 153.

(u) Homage and Fealtie cannot be divided betweene Coparceners. (w) So a picharie incertaine, or a common ſauns nombre cannot be divided betweene coparceners, for that would be a charge to the Tenant of the Soile. (x) The Lord Mountjoy ſeiſed of the Mannor of Canford in fee, did by Deed, indented and inrolled, bargaine and ſell the ſame to Browne in Fee, in which Indenture this clauſe was contained, Provided alwayes, and the ſaid Browne did covenant and grant to and with the ſaid Lord Mountjoy, his heires and aſſignes, that the Lord Mountjoy, his heires and Aſſignes might dig for Ore in the lands (which were great waſts) parcel of the ſaid Mannor, and to dig turfe alſo for the making of Allome. And in this caſe three poynts were reſolved by all the Judges. Firſt, that this did amount to a grant of an intereſt and Inheritance to the Lord Mountjoy, to digge, &c. Secondly, that notwithſtanding

(u) 17.E.3.72. (w) 13.E.2.Quar.Imped. 170. Fleta lib.5.cap.9. (x) Mich.24.& 25.Eliz. inter Comitem de Huntingdon & Seignior Mountjoy.

ding this grant. Browne his heires and assignes might dig also, and like to the case of Common Sauns nomber. Thirdly, that the Lord Mountjoy might assigne his whole interest to one, two, or more, but then if there be two or more, they could make no division of it, but work together with one stocke, neither could the Lord Mountjoy, &c. assigne his interest in any part of the waste to one or more, for that might work a prejudice and a surcharge to the tenant of the land, and therefore if such an incertaine Inheritance descendeth to two Coparceners, it cannot be divided betweene them.

Vide 5. Mariæ Dier 153

But then it may be demanded, what shall become of these Inheritances? The answer is, that it appeareth in our Bookes that regularly (y) the eldest shall have the reasonable Estovers, Common, Piscary, Corody incertaine, &c. and the rest shall have a contribution, that is, an allowance of the value in some other of the Inheritance, and so of the like. But what if the common Inheritance left no other inheritance to give any thing in allowance, what contribution or recompence shall the younger Coparceners have? It is answered, that if the Estovers or Piscary or Common be incertaine, then shall one Coparcener have the Estovers, Piscary, or Common, &c. for a time, and the other for the like time: as the one for one yeare, and the other for another, or more, or lesser time, whereby no prejudice can grow to the owner of the soile. Or in case of the Piscary, the one may have one fish, and the other the second, &c. or one may have the first draught, and the second the second draught, &c. And if it be of a park, one may have the first Beast, and the second the second, &c. And if of a Mill, one to have the Mill for a time, and the other the like time, or the one one toll dish, and the other the second, &c. And this appeareth to be the ancient Law, for it is said, (z) Sunt aliæ res hæreditariæ quæ veniunt in partitionem, quæ cum dividi non possunt conceduntur uni, ita quod aliæ cohæredes alibi de communi hæreditate habeant ad valorem, sicut sunt vivaria, piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundum piscem, tertium vel quartum, vel secundum tractum, tertium vel quartum. Item in parcis secundam, tertiam aut quartam.

(y) 2.E.2. dower 123. 13. E.2.quar.Imp.170.Fleta ubi supra.vide Mirror.ca. 2.Sect.17.

(z) Bracton lib.2.76. Britton cap.71. 72 Flet. lib.5.cap.9.

But now let us turne our eye to inheritances of Honour and Dignity. And of this there is an ancient Booke case(*) in 23.H.3.tit.partition 18. in these words: Note, if the Earledome of Chester descend to Coparteners, it shall be divided between them as well as other Lands, and the eldest shall not have this Seigniory and Earledome entire to her selfe, Quod nota, adjudge per totam Curiam. By this it appeareth that the Earledome (that is, the possessions of the Earledome) shall bee divided, and that where there bee more Daughters than one, the eldest shall not have the Dignity and Power of the Earle, that is, to bee a Countesse. what then shall become of that Dignity? The answer is (a) that in that case the King, who is the Soveraigne of Honour and Dignity, may for the incertainty conferre the Dignity upon which of the Daughters he please. And this hath beene the usage since the Conquest, as it is said.

(*) 23.H.3.tit.part.18.

(a) 3.H.3.tit.prescription.

But if an Earle that hath his dignity to him and his heires dieth, having issue one daughter, the dignity shall descend to the daughter, for there is no incertainty, but onely one daughter, the dignity shall descend unto her and her posterity, as well as any other inheritance, and this appeareth by many presidents, and by a late judgement given in Sampson Leonards case, who maried with Margaret the only sister and heire of Gregory Fines Lord Dacre of the South, and in the case of William Lord Ros.

Sampson Leonards ca
Lord Rosses ca.

But there is a difference betweene a dignity or name of Nobility, and an office of Honor. For if a man hold a Mannor of the King to be high Constable of England, and dye having issue two daughters, the eldest daughter taketh husband, he shall execute the office solely, and before mariage it shall be exercised by some sufficient Deputy, and all this was resolved by all the Judges of England, in the case of (b) the Duke of Buckingham. But the dignity of the Crown of England is without all question descendible to the eldest daughter alone, and to her posterity, and so hath it beene declared by Act of Parliament. (*) For, Regnum non est divisibile. And so was the descent of Troy.

(b) 11.Eliz.Dier 285. the Duke of Buckinghams Case. Vide. no. b. 5. C

(*) 25.H.8.cap.22.

Præterea sceptrum Ilione quod gesserat olim,
Maxima natarum Priami———

Virgil.1.Æneid.

(b) If a Castle that is used for the necessary defence of the Realme descend to two or more Coparceners, this Castle might be divided by Chambers and Roomes as other Houses bee, but yet for that it is Pro bono publico & pro defensione Regni, it shall not be divided, for as one saith, Propter jus gladii dividi non potest. And another saith, (*) Pur le droit del espee que ne soeffre division en aventure que la force del Realme ne defaille pax taunt. But Castles of habitation for private use, that are not for the necessary defence of the Realme ought to bee parted between Coparceners as well as other houses, and wives may thereof be endowed, as hath beene said in the Chapter of Dower.

(b) Bracton lib. 2.fol.76 Fleta lib.5.cap.9.

(*) Britton 186,187.

Vide Sect.36.

If there be two Coparceners of certaine Lands with warranty, and they make partition

of the Land, the warranty shall remayne, because they are compellable to make partition.

(c) 29.E.3.garrantle 70.
(d) Itin.Pickering. 8.E.3.Rot.34.

(c) But otherwise it was of Joyntenants at the Common Law, as shall be said hereafter in his proper place. (d) Thomas de Eberston seised of the Mannor of Eberston, within the Forrest of Pickering, had kept time out of mind, a Woodward for keeping of the woods parcel of that Mannor, and had the barke of all the Trees felled in the said woods by any of the Forresters of that Forrest as belonging to his Mannor (which he could not have without a Prescription.) Thomas of Eberston infeoffed two of the said Mannor, betweene whom partition was made, so as one of them had the one halfe in severalty, and the other the other halfe. Robert Wyerne afterwards had the one halfe, and Thomas Thurnise the other, and they in the Eyre of Pickering claimed to keepe a Woodward within the said Woods, and the barke aforesaid, and the truth hereof and the usage being specially found by the Forresters, Verderors, and Regarders, Willoughbie, Hungerford, and Hanburie, Justices Itinerants within that Forrest, gave judgement as followeth. Ideo consideratum est quod prædict' Robertus & Thomas habeant Woodwardum & Corticem in bosco prædicto de quercubus prædictis sibi & hæredibus suis imperpetuum. Salvo semper jure, &c.

Sect. 242.

Cauxy si home seisie de tenements en fee simple, ou en fee taile, deby saums issue de son corps engender, & les tenements discendont a ses soers, eis sont Parceners, come est avantdit. Et en mesne le manner, lou il nad pas soers mes les tenements discendont a ses aunts, eis sont Parceners, &c. Mes si home nad forsque un file, el ne poit estre dit Parcener, mes el est appelle file & heire, &c.

ALso if a man seised of Tenements in Fee simple or in Fee-tayle, dieth without issue of his bodie begotten, and the Tenements descend to his Sisters, they are Parceners as is aforesaid. And in the same manner, where he hath no Sisters but the lands descend to his Aunts, they are Parceners, &c. But if a man hath but one Daughter, she shall not be called parcener, but she is called Daughter and Heire, &c.

Cou en fee taile. This must be intended of an estate taile made to the Father and to the heires of his body, for otherwise if the state Tayle were made to a man and to the heires of his body, his Sisters cannot inherit it. And not only Daughters shal be Coparteners, but Sisters, Aunts, great Aunts, &c.

File & heire, &c. Here by (&c.) is implyed Sister and heire, Aunt and heire, great Aunt and heire, and so upward.

Sect. 243.

By this Section, and the (&c.) in the end of it, it is to be understood that there are two kind of partitions betweene Coparceners, the one in deed or expresse, and the other in Law or implicite. Of partitions in deed or expresse, some bee voluntary, whereof Littleton enumerates foure Manners, and one compulsary, that is, by Writ of Partition.

3

CEt est alcavoir, que partition enter parceners poit estre fait en divers manners. Un est quāt els agreeont de faire partition, & font partition de les Tenements, sicome si soyent deux parceners

AND it is to be understood, that partition may be made in divers manners. One is when they agree to make partition, and doe make partition of the tenements. As if there be two Parceners to divide betweene them

a

a devider enter eux les Tenements en deux parts, chescun part per soy en severaltie, & ô egal value. Et si sont 3. Parceners a devider les tenements en trois parts per soy en severaltie, &c.

the tenements in two parts, each part by it selfe in severalty, and of equall value. And if there bee three Parceners, to divide the tenements in three parts by it selfe in severalty, &c.

The first partition in deed betweene coparceners, is that which Littleton here speaketh of, viz. Quant els agreont & font partition de les tenements, &c. chescun part per soy en severalty & de egall value, &c. If Coparceners make partitiõs at full age, and unmaried, & of sane memorie of Lands in fee simple, it is good & firme for ever, albeit the values bee unequall, but if it be of lands entailed, or if any of the Parceners be of non sane memorie, it shall bind the parties themselves but not their issues unlesse it be equall. Or if any be Covert, it shall bind the husband, but not the wife or her heires. Or if any be within age, it shall not bind the Infant, as shall be said more fully hereafter. The second partition followeth in the next Section, And here the (&c.) implyeth further, that if there be foure Parceners, then foure parts, if five, five parts, and so forth. It further implyeth, that all this must be in severalty; whereof and with what limitations this is to bee understood it hath beene declared before.

f. 255.

f. 256.

f. 258.

Vide Sect. 242.

Sect. 244.

CUm auter partition est, a estier per agreement enter eux, certeine de lour amies, de faire partitiõ des terres ou tenemts en le forme avantdit. Et en tiels cases apres tiel partition, le eigne file prymerment esleira un des partes issint divides, que el voit aver pur sa part, & donques la second file procheine apres luy auter part, & donques le tierce soer auter part, donques le 4. auter part, &c. si issint soit que soient pluisors soers, &c. si ne soit autrement agree enter eux. Car il poit estre agree enter eux, que un avera tiels tenemts, & un aũ tiels tenemts, &c. sans ascun tiel primer election, &c.

ANother partition there is, *viz.* to choose by agreement betweene themselves certaine of their friends to make partition of the Lands or Tenements in forme aforesaid. And in these cases after such partition, the eldest daughter shall choose first one of the parts so divided which she will have for her part, and then the second Daughter next after her another part, and then the third Sister another part, then the fourth another part, &c. if so be that there be more Sisters, &c. unlesse it be otherwise agreed betweene them. For it may be agreed betweene them that one shall have such Tenements, and another such Tenements, &c. without any primer election.

¶ *Donques le 4. auter part, &c.* Here the (&c.) implyeth the 5. after, and after her the 6. and so forth.

31. Ass. 26.

¶ *Car il poet estre agree enter eux que un avera tiels tenemẽts & un auter tiels tenements, &c.*

Here by this (&c.) is implyed divers rules of Law proving the conclusion of Littleton in this Sect. viz. modus & conventio vincunt legem. Pacto aliquid licitum est, quod sine pacto non admittitur. Quilibet potest renunciare juri pro se introduct. But with this limitation, that these Rules extend not to any thing, that is against the Cõmon-wealth, or common right. For conventio privatorũ non potest publico juri derogare.

Reg:

Sect.

Sect. 245.

¶ *Enitia pars.* It is called in old bookes * Æiſnetia, which is derived of the French word Eiſne for eldeſt, as much to ſay as the part of the eldeſt, for Bracton ſaith, Quod Eiſnetia ſemper eſt præferenda propter privilegium ætatis, ſed eſto quod filia primogenita relicto nepote vel nepte in vita patris vel matris deceſſerit, præferenda erit ſoror antenata tali nepoti vel nepti quantum ad Eiſnetiam quia mortem parentum expectant. And herewith agreeth Fleta alſo, Quod nota, whereby it appeareth that Enitia pars is perſonall to the eldeſt, and that this prerogative or privilledge deſcendeth not to her iſſue, but the next eldeſt ſiſter ſhall have it. (f) And here is a diverſity to be obſerved betweene this caſe of a partition in deed by the act of the parties, (for there the privilledge of election of the eldeſt daughter ſhall not deſcend to her iſſue.) And where the law doth give the eldeſt any privilledge without her act, there that privilledge ſhall deſcend. As if there bee divers Coparceners of an Advowſon * and they cannot agree to preſent, the Law doth give the firſt preſentment to the eldeſt, and this privilledge ſhall deſcend to her iſſue, nay her Aſſignee ſhall have it, and ſo ſhall her husband that is tenant by the curteſie have it alſo.

¶ *Donques il eſt dit leigne ſoer eſlier pluis darreine &c.* By this and the &c. in the end of this Section is implyed, the rule of Law is Cujus eſt diviſio, alterius eſt electio. And the reaſon of the Law is for avoyding of partiality.

(Ipſæ etenim Leges cupiunt ut Jure regantur.)

which might apparently follow if the eldeſt might both divide and chooſe. Now followeth the third partition in Deed.

*Bract.lib.2.77. Fleta lib.5.ca.9. Britton ca.72. fo.187

(f) 45.E.3.fines 41. 19.E.3.quar.imp.59. 18.E.2.ibid.176. 5.H.5.10. 38.H.6.9. Doct.& Stud.116.117. Vide Bract.238.249. * 5.H.7.8. 34.H.6.40. 11.H.4.54.20.E.3.quar. Imp.63. 34.E.3. Ibid.198. 15.E.3.Dar. Preſentment 11. 17.E.3.20.21. 21.E.3.21. F.N.B.32.

Reg.

Sect. 245.

AND the part which the eldeſt ſiſter hath is called in Latine *Enitia pars.* But if the parceners agree that the eldeſt ſiſter ſhall make partition of the Tenements in manner aforeſaid, and if ſhe doe this, then it is ſaid that the eldeſt ſiſter ſhall chooſe laſt for her part, and after every one of her ſiſters, &c.

Sect. 246.

¶ Nauter partition ou allotment eſt, ſicome ſoient quater parceners, & apres le partition de les Terres fait, chescũ part del terre ſoit per ſoy ſolement eſcript en un petit eſcrobet, & ſoit covert tout en cere, en le manner dun petit pile, iſſint que nul poit veier leſcrobet, & donque ſoient les 4. piles de cere mis en un bõnet a garder, en les maines dun indifferent home, &

ANother partition or allotment is, as if there be foure parceners, and after partition of the lands be made, every part of the land by it ſelfe is written in a little ſcrowle, and is covered all in waxe in manner of a little ball, ſo as none may ſee the ſcrowle, and then the 4. balls of waxe are put in a hat to bee kept in the hands of an indifferent man, and then the eldeſt daughter ſhall firſt

donqs

donqs leigne file primermēt mettra ſa maine en le bonnet, quel prendra un pile de cere obeſque leſcrobet deins m̄ le pile pur ſa part, & donqs le ſecond ſoer mettra ſa maine en le bonnet & prendra un auter, le tierce ſoer le 3. pile, & le 4. ſoer le 4. pile, &c. & en ceo cas covient cheſcun de eux luy tener a ſa chance & allotmēt.

put her hand into the hat, and take a ball of waxe with the ſcrowle within the ſame ball for her part, And then the ſecond ſiſter ſhall put her hand into the hat and take another, the 3. ſiſter the 3. ball, and the 4. ſiſter the 4. ball, &c. And in this caſe every one of them ought to ſtand to their chance and allotment.

¶ *Allotment.* Of this partition by Lots ancient Authors write, that in that caſe Coparceners Fortunam faciunt judicem: And Littleton here termeth it chance, for in the end of this Section he ſaith, that in this caſe every of them ought to hold her ſelfe to her chance: and of this kinde of diviſion you ſhall reade in holy Scripture, where it is ſaid, Dedi vobis poſſeſſionem quam dividetis ſorte.

Fleta lib.5.cap.5. Bracton lib.2.73. Britton cap.72. Vid. Numbers ca.26. verſe 54.55. & ca.33. v.54. Of diviſion by lot.

The &c. in the end of this Section implyeth that if there be more coparceners there muſt be more balls according to the number of the parceners.

Sect. 247.

¶ Item, un auter partition il y ad ſicome ſont quater Parceners, & ils ne voilent agreer a partition deſtre fait enter eux, donque lun poit aver bꝛe De partitione facienda, enbers les autꝛs trois: ou deux ď eux poient aver bꝛe De partitione facienda enbers les auters deux, ou trois de eux payent aver bꝛe De partitione facienda enbers le quart, a lour election.

ALſo there is another Partition, As if there bee foure parceners, and they will not agree to a partition to bee made betweene them, then the one may have a Writ of *Partitione facienda* againſt the other three, or two of them may have a writ of *Partitione facienda* againſt the other two, or three of them may have a writ of *Partitione facienda* againſt the fourth, at their election.

¶ Here followeth the fourth Partition in Deed. Littleton having ſpoken of voluntary partitions, or partitions by conſent: now he ſpeakes of a Partition by the compulſary means of Law where no Partition can be had by conſent. Now of what inheritance partition may be made by the writ of Partitione facienda, may partly appeare by that which hath beene ſayd. Moreover it is to bee obſerved that the words of the writ De partitione facienda, be * Quod cum eædem A. & B. inſimul & pro indiviſo teneant tres acras terræ cum pertinen', &c. And note that this word (Tenet) in a writ doth always imply a Tenant of a Freehold. And therefore (g) if one Coparcener maketh a Leaſe for yeares, yet a writ of Partition doth lie. But if one or both make a Leaſe for life, a writ of Partition doth not lye betweene them, becauſe Non inſimul & pro indiviſo tenent, they doe not hold the freehold together, and the writ of partition muſt be againſt the Tenant of the freehold. (h) If one Coparcener diſſeiſe another, during this diſſeiſin a writ of partition doth not lie betweene them, for that Non tenent inſimul & pro indiviſo.

* 3.E.3.47.48.

(g) 21.E.3.57. F.N.B.62.g. 28.H.6.2. 11.H.4.3 4.H.7.10.b.

(h) 4.H.7.9. 11.Aſſ.23.

But there be other partitions in deed than here have beene mentioned. (i) For a Partition made betweene two coparceners that the one ſhall have and occupy the land from Eaſter untill the firſt of Auguſt onely in ſeveralty by himſelfe, and that the other ſhall have and occupie the land from the firſt of Auguſt untill the Feaſt of Eaſter yearely to them and their heires, this is a good partition. Alſo if two Coparceners have two Mannors by deſcent, and

(i) Temps.E.1.Partic.21. F.N.B.62.I.

and they make partition, that the one ſhall have the one Mannor for one yeare, and the other the other Mannor for this yeare, and ſo alternis vicibus to them and their heires, this is a good Partition. The ſame Law is if the partition be made in forme aforeſaid, for two or more yeeres, and each Coparcener have an eſtate of Inheritance, and no Chattell, albeit either of them alternis vicibus have the occupation but for a certaine terme of yeares.

Of Partitions in Law, ſome be by act in Law without judgement, and ſome be by judgement, and not in a writ de partitione facienda. And of theſe in order.

(k) If there be Lord, three Coparceners Meſnes, and Tenant, and one Coparcener purchaſe the Tenancy, this is not onely a partition of the Meſnalty, being extinct for a third part, but a diviſion of the Seigniory paramount, for now he muſt make ſeverall abowries.

(l) If one Coparcener make a Feoffement in fee of her part, this is a ſeverance of the Coparcenarie, and ſeverall writs of Præcipe ſhall lie againſt the other Coparcener and the Feoffee.

(m) If two Coparceners be, and each of them taketh husband and have iſſue, the husbands die, the Coparcenary is divided, and here is a partition in Law.

(n) If two Coparceners be, and one diſſeiſe the other, and the Diſſeiſee bringeth an Aſſiſe, and recover, it hath beene ſaid, That ſhee ſhall have judgement to hold her moity in ſeveralty. And this ſeemeth (ſay they) very ancient, and thereupon vouch Bracton, *Si res fuerit communis locum habere poterit communi dividendo judicium. And (o) ſo (ſay they) if the one coparcener recover againſt another in a Nuper obiit, or a rationabili parte, the judgement ſhall be, That the demandant ſhall recover and hold in ſeveralty. But Britton is to the contrary, for he ſaith, * Et ſi aſcun des Parceners ſoit enget ou diſturbe de ſa ſeiſin per ſes auters Parceners, un, ou, pluſors, al diſſeiſee viendra aſsiſe per ſeverall pleint ſur les Parceners & recovera, mes nemy a tener en ſeveraltie, mes en common ſolonque ceo que avant le fiſt, &c. (p) And this ſeemeth reaſonable, for he muſt have his judgement according to his Plaint, and that was of a moitie, and not of any thing in ſeveraltie, and the Sherife cannot have any warrant to make any partition in ſeveralty or by Meres and Bounds.

(k) 38.H.6.7.

(l) 37.H.6.8. 43.E.3.1.

(m) 17.E.3.14.15.

(n) 12.E.3.Judgm.162. 7.Aſſ.10. 7.E.3.49. 10.Aſſ.17. 12.Aſſ.5.17. 10.E.3.40.43. 28.Aſſ.35. 23.Aſſ.18. 20.E.3. Aſſ.62. 3.E.3.48.b. 19.H.6.45. 7.H.6.4. 3.E.4.10. *Bract.lib.4.fol.216.b. (o) 3 E.3.48. 21.R.2.tit. Nuper ob.22. 4.H.7.10. 30.E.1. Nup.ob.18. F.N.B.9.b. * Britton fol.112.2. (p) Lib.6.fo.12.& 13. Morrices caſe accorde.

Sect. 248.

Bract.fo.66.&c. Brit.71. &c. Brit.ca.72. Fleta lib.5.ca.9.

NOte the firſt judgement in a writ of Partition, whereof Littleton here ſpeaketh, is, Quod partitio fiat inter partes prædictas de tenementis prædictis, cum pertinentiis, after which Judgement, by this &c. viz. Tenements, &c. is implyed, That a writ ſhall be awarded to the Sherife, Quod aſſumptis tecum 12. liberis & legalibus hominibus de Vicineto tuo, per quos rei veritas melius ſciri poterit, in propria perſona tua accedas ad tenementa prædicta cum pertin' & ibidem per eorum ſacrament' in preſentia partium prædictarum per te præmuniend' ſi intereſſe voluerint, prædicta tenementa cum pertin' per ſacrament' bonorum & legalium hominum prædictorum habito reſpectu ad verum valorem earundem in duas partes æquales partiri & dividi, & unam partem partium illarum, &c.

Ockam ea. Quid ſit liber judiciarius. 40.E.3.45. 9.Aſſ.2. 8.Aſſ.35. 49.E.3.2.Regiſt. F.N.B.16.

This laſt &c. in this Section is evident.

¶ *Judgement.* Judi-

CEt quant judgment ſera done ſur tiel brief, le judgment ſerra tiel, q̄ partition ſerra fait enter les parties, & que le Vicount en ſon proper perſon alera a les terres & tenements, &c. & que il per l'ſerement de xii. loyalx homes de ſon Bayliwicke, &c. ferra partition enter les parties, & que lun part de meſmes les Terres & Tenements ſoyent Aſſignes al plaintif, ou a lun des plaintifs, et un auter part a un auter Parcener, &c. nient ſea-

AND when judgmen ſhall be given upon this Writ, the judgemēt ſhall be thus, That partition ſhall be made betweene the parties, and that the Sherife in his proper perſon ſhall goe to the lands & tenements, &c. and that he by the oath of 12. lawfull men of his Bailiwick, &c. ſhall make partition between the parties, and that one part of the lands & tenements ſhal be aſſigned to the pl', or to one of the plaintifs, and another part to another parcener, &c. not making mention in

ſant

ſant mention en le judgement de leigne ſoer pluis q̃ō puiſn̄.

the judgement of the eldeſt ſiſter, more than of the youngeſt.

ciū eſt quaſi juris dictū, ſo called, becauſe ſo lōg as it ſtāds in force, pro veritate accipitur, and cannot be contradicted: And thereupon Antiquitie called that excellent Booke in the Exchequer, Domeſday, Dies Judicii, Sicut enim diſtricti & terribilis examinis illa noviſsima ſententia nulla tergiverſationis arte valet eludi, &c. ſic ſententia ejuſdem libri inficiari non poteſt, vel impune declinari, ob hoc nos eundem librum judiciarium nominamus, &c. quod ab eo ſicut à prædicto judicio non licet ulla ratione diſcedere. By Littleton it appeareth, That the formes of Judgements, pleas, and other legall proceedings, doe conduce much to the right understanding of the Law, and of the reason therof, as here Littleton rightly collecteth, upon the form of the judgement that the Sheriffe ſhall deliver to them ſuch parts as he thinks good, & that the eldeſt Coparcener ſhall have no election when partition is made by the Sheriffe. And it is to be obſerved, that there be two Judgements in a writ of Partition: Of the former Littleton ſpeaketh in this place. And when partition is made by the oath of twelve men, and aſſignement and allotment thereof, and ſo returned by the Sheriffe, then the latter judgement is, Ideo conſideratum eſt, quod partitio prædicta firma & ſtabilis imperpetuum teneatur, and this is the principall judgement. (q) And of the other, before this bee given, no writ of Error doth lie. v. fo: 288. b.

(q) Lib. 11. fo. 40. M. Thalis's caſe. Hill. 39. Eliz. Rot. 327. in Banke le Roy inter An Counteſſe de War. & le Seignior Berkley.

¶ *Shireve* is a word compounded of two Saxon words, Viz. Shire, and Reve. Shire, Satrapia, or Comitatus, commeth of the Saxon Verb Shiram, i. Partiri, for that the whole Realme is parted and divided into Shires: And Reve is præfectus, or præpoſitus; ſo as Shireve is the Reve of the Shire, præfectus Satrapiæ, Provinciæ, or Comitatus. And hee is called Præfectus, becauſe he is the chiefe officer to the King within the Shire; for the words of his Patent be, Commiſimus vobis cuſtodiam Comitatus noſtri de &c. And he hath a threefold cuſtodie, triplicem cuſtodiam, viz. Firſt, Vitæ Juſtitiæ, for no ſuit begins, and no Proceſſe is ſerved but by the Sheriffe. Alſo he is to returne indifferent Juries for the triall of mens lives liberties, lands goods, &c. Secondly, Vitæ legis, he is after long ſuits and chargeable, to make execution, which is the life and fruit of the Law. Thirdly, Vitæ Reipublicæ, hee is principalis conſervator pacis within the County, which is the life of the Common wealth, Vita Reipublicæ pax.

He is called before Sect 234. Viſcount, in Latyne, Vicecomes, i. Vice Comitis, that is, in ſtead of the Earle of that County, who in ancient time had the regiment of the County under the King. For it is ſaid in the Mirror, * That it appeareth by the ordinance of ancient Kings before the Conqueſt, That the Earles of the Counties had the cuſtodie or gard of the Counties, and when the Earles left their cuſtodies or gards, then was the cuſtodie of Counties committed to Viſcounts, who therefore (as it hath beene ſayd) are called Vicecomites, and Ockam cap. Quid centur', &c. Porro Vicecomes dicitur, quod vicem Comitis ſuppleat.

Vide the ſecond part of the Inſtitutes. W. 1. c. 10.
(*) Mirror cap. 1. Sect 3.
Ockam cap. Quid Centur. &c.

Marculphus ſaith, This office is, Judiciaria dignitas. Lampridius, That it is Officium dignitatis. Forteſcue ſaith, Quod Vicecomes eſt nobilis officiarius. And ſee there, and obſerve well his honourable and ſolemne election and creation at this day. But to confirme all that hath beene ſaid touching this point, and to conclude the ſame, among the Lawes of Edward the Confeſſor I finde it thus recorded, Verum quod modo vocatur Comitatus, olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabatur conſulatus, & qui modo vocantur Vicecomites, tunc temporis Vice conſules vocabantur; ille vero dicebatur viceconſul qui conſule abſente ipſius vices ſuppleba in jure & in foro. Herein many things are worthy of obſervation: Firſt, for the antiquity of Counties. Secondly, That which we called Comitatum, the Romanes more Latinely called Conſulatum. Thirdly, whom the Saxons afterwards called (as hath beene ſaid) Shireve or Earle, the Romanes called Conſul. Fourthly, that the Sheriffe was deputy of the Conſull or Earle, and therefore the Romanes called him Viceconſul, as we at this day call him Vicecomes. Fiftly, that the Sheriffe in the Romanes time, and before, was a miniſter to the Kings Courts of Law & Juſtice, and had then a Court of his owne, which was the County Court, then called Curia Conſulatus, as appeareth by theſe words, Ipſius vices ſupplebat in jure & in foro. Sixtly, that this Realm was divided into Shires and Counties, and thoſe Shires into Cities, Boroughes, and Townes, by the Brittaines: So that King Ælfreds diviſion of Shires & Counties, was but a renovation or more exact deſcription of the ſame. Laſtly, the conſequence that will follow upon theſe things, being ſo ancient (as in the time of, and before the Romanes) the ſtudious Reader will eaſily collect. And afterwards, fol. 135. amongſt the Lawes of the ſame King it appeareth, That thoſe whom the Saxons ſometimes called (and now we call) Ældermen, or Eorles, the Romanes called Senatores, Et ſimiliter olim apud Britones temporibus Romanorum in Regno iſto Britanniæ vocabantur Senatores, qui poſtea temporibus Saxonum vocabantur Aldermani, non propter ætatem, ſed propter ſapientiam & dignitatem, cum quidam adoleſcentes eſſent, juriſperiti tamen & ſuper hoc experti.

Lambert ſol. 129. 12.

Cæſar. Polichro. Huntingdon. Polidor. inter leges Malmucii. Hooker lib. 2. p. 71.

¶ De

¶ *De son Baylywicke.* It appeareth before, that the Enquest must be De vicineto, of the place where the lands doe lye, and not generally De Baliva tua. By this it appeareth, That the Sheriffe is Balivus, and his County called Baliva, and therefore it is good to be seene what Balivus originally signified, and whereof it is derived.

Fleta lib. 2. cap. 67. Baylife is a French word, and signifies an Officer concerning the administration of Justice of a certaine Province: and because a Sheriffe hath an office concerning the administration

Bract. lib. 3. tract. 2. ca. 33. nu. 3. Idem lib. 3. fo. 121. b. of Justice within his County or Bailiwicke, therefore he calleth his County Baliva sua: for example, when he cannot finde the Defendant, &c. he returneth, Non est inventus in Baliva mea. I have heard great question made, what the true exposition of this word Balivus is. In the Statute of Magna Charta cap. 28. the letter of that Statute is, Nullus Balivus de cætero ponat

Bract. li. 3. 156. b. Brit. fo. 56. Fleta li. 2. ca. 63. aliquem ad legem manifestam nec ad juramentum simplici loquela sua sine testibus fidelibus ad hoc inductis. And some have said, That Balivus in this Statute signifieth any Judge, for the law must be waged and made before the Judge. And this Statute (say they) extends to the Courts of Common Pleas, Kings Bench, &c. For they must bring with them Fideles testes, &c. and so hath beene the usage to this day.

But I have perused a very ancient and learned reading upon this Statute, and the Reader taketh it, That at the Common Law before this Statute, he that would make his Law in any Court of Record, must bring with him Fideles testes. And this opinion herein is warranted by

Glanvil. li. 1. ca. 9. Glanvil, who wrote in the reigne of Henry the second. But the reader holdeth, That in the Courts which were not of Record, as the County Court, the Hundred Court, the Court baron, &c. there the Def. without any faithfull witnesses, might before this Stat. have made his Law, for remedy whereof this act was made: and therefore (saith he) the statute extendeth to the Judges of such Courts as are not of Record. In

10. H. 4. 4. 10. H. 4. it is holden, That if a Lord that hath a Franchise in a Leet, doth not enquire of things enquirable, and punish them, the Sheriffe shall enquire in his Turne, Et si le Vicount ne faire, en son Torne, le Baylie le Roy enquirer' quant il vient, ou autrement serra enquise per Justice en Eire. where Baylie le Roy is understood Justice le Roy. And in the Mirror* it is holden, That the Statute doth

*Mir. ca. 5. Sect. 2. Vid. Bract. fo. 409. Flet. li. 2. ca. 63. 56. extend to every Justice, Minister of the King, Steward, &c. and all comprehended under this word Baylife.

The chiefe Magistrates in divers ancient Corporations are called Baylifs, as in Ipswich, Yarmouth, Colchester, &c. And Baylife in French, is Diœcetes, Nomarcha, in English, a Baillife or governour. But of this thus much shall suffice.

Sect. 249.

Brit. fo. 185. b. acc. Bract. l. 2. fo. 71. &c. Flet. l. 5. ca. 7. ¶ *South son Seale. &c.* Note, the partition made and delivered by the Sheriffe and Jurors, ought to bee returned into the Court under the Seale of the Sheriffe & the seales of the twelve Jurors, for the words of the Judiciall writ of Partition, which doth command the Sheriffe to make partition, are, Assumptis tecum 12. &c. (so as there must be twelve) & partitionem inde, &c. scir' facias Justiciariis, &c. sub sigillo tuo, & sigillis eorum per quorum sacramentum partitionem illam feceris &c.

¶ Et de la partition que l' Vicount ad issint fait il serra notice as Justices south son Seale, & les Seales de chescun de les 12, &c. Et issint en ē case poies veier q̄ leigne soer navera my la primer election, mes le Vicount luy assignera sa part que el avera, &c. Et poit estr̄ que le Vicount doit assignet̄ primerm̄t un part a le plus puisn̄ &c. & darreinement al eigne, &c.

And of the partition which the Sherife hath made, he shall give notice to the Justices under his Seale, and the seales of everie of the 12, &c. And so in this case you may see, that the eldest sister shal not have the first election, but the Sherife shall assigne to her her part which she shal have, &c. And it may be that the Sherife will assigne first one part to the youngest, &c. and last to the eldest, &c.

And this is the reason wherefore in this case the partition which they make upon oath, ought to be returned under their seals: & the reason of that is for the more strengthning of the partition

tition by the 12. and that the Sheriffe should not returne what partition hee would. Now after all this, this (&c.) viz. 12. &c. doth imply, that the principall judgement upon the partition so returned is, Ideo consideratum est per Curiam quod partitio firma & stabilis imperpetuum teneatur, the latter two (&c.) are evident.

Lib.11.fol.40.in Medcalfes case.

Sect. 250.

¶ Et nota q̄ partition per agreement perenter parceners, poit estre fait per la ley enter eux auxibien per parol sans fait, come per fait.

And note that partition by agreement betweene Parceners, may bee made by Law betweene them, aswell by paroll without Deed, as by Deed.

Here it appeareth that (r) not onely Lands and other things that may passe by livery without Deed, but things also that do lie in grant, as rents, Commons, Advowsons and the like, that cannot passe by grant without deed, whether they bee in one County or in severall Counties, may bee parted and divided by Paroll without Deed. (s) But a partition betweene Joyntenants is not good without Deed, albeit it be of Lands, and that they be compellable to make partition by the Statutes of 31. H.8.cap.10. and 32.H.8.cap.32. because they must pursue that Act by writ de partitione facienda, and a partition betweene Joyntenants without writ remaines at the Common Law which could not be done by Paroll. And so it is and for the same reason of Tenants in Common. But if two Tenants in Common be, and they make partition by Paroll, and execute the same in severalty by Livery, this is good and sufficient in Law. And therefore where Books say, that Joyntenants made partition without Deed, it must bee intended of Tenants in Common, and executed by Liverie.

(r) 3.E.4.9.10. 9.E.4.38. 11.H.4.3.9 H.4.partition, 13. 21.E.3.38.

(s) Vide Sect.290. 3.H.4.1. 19.H.6.25. 28.H.6.2. 3.E.4.9.10. 47.E.3.22. 47.Ass.8. 19.H.6.1. 17.E.3.46.30.Ass.8. Lib.4.fo.73.Li.6.fo.12.13. 2.H.7.5.Dier.18.Eliz.358. 31.H.8.Dier.46. 2.Eliz. Dier.179.28.H.8.Dier.29. 1.Mar.Dier.98.

Nota, betweene Joyntenants there is a twofold privity, viz. in estate and in possession: betweene Tenants in Common, there is privity onely in possession, and not in estate: but Parceners have a threefold privity, viz. in estate, in person, and in possession.

Sect. 251, & 252.

¶ Item si deux meases descendont a deux Parceners, & lun mease vault per an 20. s. lauter forsque 10. s. per an, en cest cas partition poit estre fait enter eux en tiel forme, cestascavoir, que un parcener avera lun mease, & que lauter parcener avera lauter mease, & celuy q̄ aver le mease, que est d̄ value de 20. s. & ses heyres, payeront un annual rent

Also if two Meses descend to two parceners, and the one Mease is worth twenty shillings *per annum*, and the other but ten shillings *per annum*, In this case partitiō may bee made betweene them in this manner, to wit, the one Parcener to have the one Mease, and the other Parcener the other Mease. And she which hath the Mease worth 20. shillings *per annū*, and her heires, shal pay

¶ *Per Parol.* Nota, Here (t) a Rent may be granted for qwelty of partition without Deed even as a Rent in case of a Lease for yeares, for life, or a gift in taile may bee reserved without Deed, and so may a rent be assigned to a woman out of the Land whereof shee is Dowable, &c. without Deed, but albeit an exchange for Lands in the same County may bee without Deed, yet (u) a Rent granted for egality of the same exchange cannot be without Deed, and the cause of the difference is apparent, for Coparceners are in by descent, and compellable to make partition.

(t) 8.E.3.16. 21.Ass.p.1. 21.E.3.38. 11.H. 43.61. 45.E.3.21. 2.H.6.14. 21.H.6.11.1.Mar.Dier.91.

¶ *Le Rent, &c.* The same Law is of Common of Estovers, or a Corodie, or a Common of

of Paſture, &c. or a way granted upon the partition by the one Coparcener to the other. All which and the like albeit they lie in grant, yet upon the partition may they be granted without deed.

¶ *Iſſuant hors de meſme le meaſe, &c.* (x) For if it be granted out of other Lands than deſcended to the coparceners, then there muſt be a Deed. (z) But if the Rent be granted generally (out of no land in certaine) for owelty of partition, pro reſiduo terræ, it ſhall bee intended out of the purpartie of her that granteth it.

(a) If there be three Coparceners and they make partition, and one of them grant twenty ſhillings per annum out of her part to her two ſiſters, and their heires, for Egality of partition, the grantees are not joyntenants of this Rent, but the rent is in nature of coparcenary, and after the death of the one Grantee, the moity of the rent ſhall deſcend to her iſſue in courſe of coparcenary, and not ſurvive to the other, for that the rent doth come in recompence of the Land, and therefore ſhall enſue the nature thereof, and if the grant had beene made to them two of a rent of twenty ſhillings, viz. to the one ten ſhillings, and to the other ten ſhillings, yet ſhall they have the rent in courſe of Coparcenary, and joyne in action for the ſame.

(b) If one Coparcener be maried, and for owelty of partition the husband & wife grant a rent to the other two out of the part of the Fem Covert, this partition being equall, ſhall charge the part of the Fem Covert for ever.

(c) If two Coparceners by Deed indented alien both their parts to another in fee, rendring to them two and their heires a rent out of the Land, they are not joyntenants of this rent, but they ſhall have the rent in courſe of coparcenary, becauſe their right in the land out of which the rent is reſerved, was in Coparcenary.

¶ *Purront diſtreiner de common droit, &c.* That is, (d) in this caſe the Law doth give a diſtreſſe, leſt the Grantee ſhould bee without remedy, for the which upon the partition ſhe hath given a valuable recompence in Land, which deſcended, &c. And ſo in the caſe of Dower above mentioned.

(x) 1 Mariæ Dyer 91.

(z) 29.Aſſ.23.29.E.3.9.b. Pl.Com.34.

(a) 15.H.7.14.29.Aſſ.23. 29.E.3.9.b.

(b) 29.Aſſ.23.29.E.3.9. 47 E.3.10.

(c) 38.E.3.26.b.

(d) 1 Mariæ Dyer.91. 8.E.3.16. and other the bookes aboveſaid.

de b.s. iſſuant hors de meſme le meaſe a lauter parcener, & a ſes heires a touts jours pur ceo que cheſcun de eux aũoit owelty en value.

a yearely rent of five ſhillings, iſſuing out of the ſame meaſe to the other Parcener, and to her heires for ever, becauſe each of them ſhould have equality in value.

Sect. 252.

¶ Et tiel partition fait per parol eſt aſſets bone, & meſme le Parcener q̃ avera le rent & ſes heires, purront diſtreiner de common droit, pur le rent en le dit meaſe de le value de 20 s. ſi le rent de 5. s. ſoit aderere en aſcun temps en quecunque mains q̃ meſme le meaſe deviendra, coment que ne fuit unques aſcun eſcripture de ceo fait enter eux ô tiel rent.

AND ſuch partition made by paroll is good enough, and that Parcener who ſhall have the rent and his heires, may diſtrein of common right for the Rent in the ſayd meaſe, worth twenty ſhillings, if the rent of 5. ſhillings be behinde at any time, in whoſe hand ſoever the ſame meaſe ſhall come, although there never were any writing of this made betweene them for ſuch a rent.

Sect. 253.

¶ Terres & Tenements, &c. Here (&c.) implyeth a Caution, viz. that they be ſuch Lands

¶ En meſme le manner eſt, ô touts maners ô tres & tene-

IN the ſame manner it is of all manner of Lands and Tene-

ments

ments, &c. lou tiel rent eſt reſerve a un, ou a divers Parceners ſur tiel partition &c. Mes tiel rent neſt pas rent ſervice, mes eſt rent charge de cõmon droit ewe & reſerve pur egaltie de partition.

ments, &c. where ſuch rent is reſerved to one or to divers parceners upon ſuch partition, &c. but ſuch rent is not Rent ſervice, but a rent charge of common right had and reſerved for equality of partition.

and tenements out of which a Rent for egaltie of partition may be granted: whereof ſufficient hath beene ſaid before. 164. b. & 165. a.

¶ *Reſerve al un.* Here reſervation is taken for a grant, and if it be uſed upon the partition, doth amount in this caſe to a grant, which is worthy the obſervation.

Sect. 254.

¶ Et nota, que nulles sõt appelles parceners p le common ley, mes females, ou les heires de females que veignõt a terres & teneñts p deſcent. Car ſi ſoers purchaſe terres ou tenements, de ceo ils ſont appelles joyntenants, & nemy parceners.

AND note that none are called parceners by the Common-Law, but females or the heires of females which come to lands or tenements by deſcent: for if ſiſters purchaſe lands or tenements, of this they are called joyntenants and not parceners.

This needs no explanation.

Sect. 255.

¶ Itẽ ſi deux Parceners de terr̃ en fee ſimple, font partition enter eux, & la part de un vault pluis q̃ le part d̃ lauter, ſi eis fueront al temps de la partition de pleine age, ſ. de 21. ans, donq̃ la partition, touts dits demurrera, & ne ſerra unques defeat. Mes ſi les tenements (dont eis font partition) ſoyent a eux en fee taile, & le part que lun ad eſt

ALſo if two parceners of Land in fee ſimple make partition between themſelves, and the part of the one valueth more than the part of the other, if they were at the time of the partition of full age, s. of 21. yeares, then the partition ſhall alway remaine and be never defeated. But if the tenements (whereof they make partition) be to them in fee taile and the part of the one

¶ *Donques le partition touts dits demurrera, &c.* Hereby it appeareth that the inequality of the value ſhall not impeach a partition made of lands in fee ſimple betweene coparceners of full age, no more than it ſhall doe in caſe of an exchange. 9. H. 6. 5. and other the bookes aboveſaid.

¶ *Ils ſont concludes durant leur vies.* This inequall partition doth ſo conclude the parceners themſelves, as ſhee that hath the unequall part ſhall not avoid it during her life.

¶ *Concludes.* This word is derived of Con and Claudo, and in this ſenſe ſignifieth to cloſe or ſhut up her mouth that ſhe cannot ſpeake to the contrary.

11.Ass.p.23. Husband and wife tenants in speciall taile of certaine Lands in fee have issue a daughter, the wife dieth, the Husband by a second wife hath issue another daughter, both the Daughters enter (where the eldest is onely inheritable) and make partition, the eldest daughter is concluded during her life to impeach the partition, or to say that the youngest is not heire, and yet she is a stranger to the taile but in respect of privity in their persons, the partition shall conclude, for a partition between meere strangers in that case is voyd, but the issue of the eldest shall avoid this partition as issue in taile.

See after the Chapter of Garr.

(g) 21.E.3.34.35. 2.E.2.Bastardy 19. 11.Ass.23. 30.Ass.7. 17.E.3.59. (g) I.S seised of lands in fee hath issue two daughters, Rose and Anne, bastards eigne, and Mulier puisne, and dieth. Rose and Anne doe enter and make partition, Anne and her heires are concluded for ever.

melieur en annuall value, que est la part le lauter, coment q̄ els sont concludes durant lour vies a defeater la partition, uncore si le parcener q̄ ad le meinder part en value ad issue & deby, lissue poit disagreer a la partition, & enter & occupier en common lauter part que fuit allotte a sa Aunt, & issint lauter poit enter & occupier en common lauter part allotte a sa soer, &c. sicome nul partitiō ust este fait.

is better in yearely value than the part of the other, albeit they be concluded during their lives to defeat the partition, yet if the parcener which hath the lesser part in value hath issue and dye, the issue may disagree to the partition, and enter and occupy in common the other part which was allotted to her Aunt, and so the other may enter and occupy in common the other part allotted to her sister, &c. as if no partition had beene made.

Sect. 256.

¶ *Els & lour barons.* Here it appeareth, that the wife must be party to the partition, and so are the Bookes * to bee intended that speake of this matter.

*42.Ass.22. 8.E.4.4. 9.E.3.38. 15.E.4.29. F.N.B.62. 29.Ass.23. 9.H.6.5. 43.Ass.14.

¶ *Et defeatera le partition.* Note, the partition shall not bee defeated for the surplusage onely to make the partition equall, but here it appeareth that it shall be avoyded for the whole. But of this more shall be said hereafter in this Chapter, Sectione 264. (h) And though the partition be unequall, yet is not the partition voyd, but voydable, for if after the decease of the Husband, the wife entreth into the unequall part, and agreeth thereunto, this shall binde, and therefore Littleton

(h) Vid.2.E.2. Cui in vita 17.

¶ Item si deux parceners de tenements en fee preigne barons, & els & lour barons font partition enter eux, si la part lun est meinder en annuall value q̄ la part lauter, durant les vies lour barons la partition estoyera en sa force. Mes coment que il estoyera durant les vies les barons, uncore apres la mort le baron, celuy feme q̄ ad le meinder part poit enter en le part sa

ALso if two parceners of Lands in fee take husbands, and they and their Husbands make partition betweene them, if the part of the one bee lesse in value than the part of the other, during the lives of their husbands the partition shall stand in its force. But albeit it shall stand during the lives of their Husbands, yet after the death of the husband, that woman which hath the lesser part may enter into

soer

ſoer come eſt avantdit, & defeatera la partition.

her ſiſters part as is aforeſaid, and ſhall defeat the partition.

uſetht he woꝛd (Deſeatera,) which pꝛobeth it to bee voydable.

Sect. 257.

¶ MEs ſi ſ partition fait penter les barons fuit tiel, que chelcun part al temps dallotment fait, fuit de egal annual value, donque il ne poit apꝛes eſtre defeat en tielꝛ caſes.

But if the partition made betweene the Husbands were thus, that each part at the time of the allotment made was of equall yearely value, then it cannot afterwards be defeated in ſuch caſes.

¶ *Perenter les barons.* This is miſtaken, foꝛ the oꝛiginall is Parenter eux, that is, betweene the Barons and Femes, and not, as it is here, betweene the Barons, therefoꝛe this erroꝛ would be hereafter reformed.

¶ *Al temps del allotment.* Hereby it appeareth, that if the parts at the time of the partition bee of equall yeaꝛely valne, neither reaſon thereof is, foꝛ that the husbands and wives were compellable by law to make partition, and that which they are compellable to doe in this caſe by Law, they may doe by agreement without pꝛoceſſe of Law. If the annuall value of the land be equall at the time of the partition, and after become unequall by any matter ſubſequent, as by ſurrounding, ill husbandꝛy, oꝛ ſuch like, yet the partition remaines good. 9.H.6.5. And other the Bookes aboveſaid.

Judicis officium eſt, ut res, ita tempora rerum
Quærere, quæſito tempore tutus eris.

But if the partition be made by foꝛce of the Kings wꝛit, and judgement thereof given, it ſhall binde the Fem-coverts foꝛ ever, albeit the parts be not of equall annuall value, becauſe it is made by the Sheriffe by the oath of twelve men by authoꝛity of Law. And the judgement is, that partition ſhall remaine firme and ſtable foꝛ ever, as hath been ſaid. (a) But a partition in the Chancery, where one Coparcener is of full age and ſueth Liꝛery, and one other is within age and hath an unequall part allotted to her, this ſhall not binde her at full age, foꝛ in a wꝛit directed to the Eſcheatoꝛ to make partition, there is a Salvo jure; And there is no judgement upon ſuch a partition. But if ſuch a partition be equall, it ſhall binde, ſo that a part of the land holden in Capite bee allotted to every of the Coparceners, foꝛ to that end there is an expꝛeſſe Proviſo in the wꝛit. (b) And this partition may be avoyded either by Scire fac' in the Chancery, oꝛ by a wꝛit De partitione facienda at the common law at her full age.

(a) F.N.B 256.259. 260. 261.262.263. 9.H.6.6. 21.E.3.31.

(b) Vid.21.E.3.31.

Sect. 258.

¶ ITem ſi deux parceners ſont, et le puiſne eſteant deins lage de 21. ans, & partition eſt fait enter eux, iſſint que la purpartie que eſt allot al puiſne ē ō meindꝛe value q̄ la purpartie lauter, en ceſt caſe le

ALſo if two Coparceners be, and the yongeſt being within the age of twenty one years, partition is made betweene them, ſo as the part which is allotted to the youngeſt, is of leſſe value than the part of the

¶ AS before in the caſe of the Fem-Covert, (c) ſo it is in the caſe of the Enfant, foꝛ if the partition be equall at the time of the allotment, it ſhall binde him foꝛ ever, becauſe he is cōpellable by Law to make partition, and he ſhall not have his age in a Partitione facienda

(c) 43.Aſſ.14. 9.H.6.5.6. 7.E.3.13. 8.E.3.24. 10.H.4.5. 31.Aſſ.16. 21.H.6.25.

da, and though the partition be unequall, and the Infant hath the leſſer part, yet is not the partition void but voidable by his entry, for if he take the whole profits of the unequall part, after his full age, the partitiō is made good for ever. And therefore Littleton here giveth him a caveat, That in that caſe hee take not the whole profits of his unequall part, neither ſhall an unequall partition in the Chancery binde an Infant, as appeareth before. But a partition made by the Kings Writ De partitione facienda, by the Sheriffe by the oath of twelve men, and judgement thereupon given, ſhall binde the Infant, though his part be unequall, Cauſa qua ſupra.

le puiſne durant l'tẽps de ſon nonage, & auxy quaunt el vient a pleine age, ſ. de 21. ans, poit enter en la purpartie a ſa ſoer allot & defeatera la partition. Mes bien ſoy gard tiel Parcener quant el vient a ſa pleine age, que el ne preigne a ſon uſe demeſne touts les profits des terres ou tenements que a luy fuer allots. Car donques el ſoy agreea a le partition a tiel age, en quel caſe la partition eſtoyera & demurra en ſa force: Mes peradventure les profits de la moitie el poit prender, relinquiſant les profits de lauter moitie a ſa ſoer.

other; in this caſe the youngeſt during the time of her nonage, and alſo when ſhee commeth to full age, s. of 21. yeares, may enter into the part allotted to her ſiſter, and ſhall defeat the partition: but let ſuch parcener take heed when ſhe comes to her full age, that ſhee taketh not to her owne uſe all the profits of the lāds or tenements which were allotted unto her: for then ſhe agrees to the partition at ſuch age, in which caſe the partition ſhall ſtand and remaine in its force: but peradventure ſhe may take the profits of the moitie, leaving the profits of the other moitie to her ſiſter.

Sect. 259.

THe Law hath provided for the ſafety of a mans or womans eſtate, that *before their age of twentie one yeares they cannot binde themſelves by any Deed, or alien any land, goods or Chattels.

*Vid. Sect. 402, 403.

¶ *Age de 21. ans.* Before this age a man or woman is called an Enfant.

Brit. fo. 65, 66. & 108. Fl. l. 1. c. 3. ca. 14.

¶ *Fait.* Factum, Anglice, a Deed, and ſignifieth in the Common Law, an Inſtrument conſiſting on three things, viz. Writing, Sealing, and Delibery, comprehending a bargaine or contract betweene party and party, man or woman. It is called of the Civilians Literarum obligatio.

¶ *Feoffment.* Of this word ſufficient hath been

¶ ET eſt aſcavoir, que quant il eſt dit, que males ou females ſont de pleine age, ceo ſerra entendue d' age de 21. ans, car ſi devant tiel age, aſcun fait ou feoffement, grant, releaſe, confirmation, obligation, ou auter ſcripture ſoit fait per aſcun de eux, &c. ou ſi aſcun deins tiel age, ſoit Baylife ou receiver a aſcun home, &c. tout ſerve pur nient, & poit eſte avoyde

AND it is to be underſtood, that when it is ſaid, That males or females bee of full age, this ſhall be intended of the age of 21 yeares, for if before ſuch age any deed or feoffement, grant, releaſe, confirmation, Obligation, or other writing be made by any of them, &c. or if any within ſuch age bee Baylife or receiver to any man, &c. all ſerve for nothing, and may be avoyded. Al-

Any

Jury home devant le dit age, ne ſera my jure en un Enquest, &c.

ſo a man before the ſaid age ſhall not be ſworne in an Enqueſt, &c.

ſaid before in the firſt Chapter of the firſt booke. 9. a

¶ *Grant.* Conceſsio is in the Common Law a conveyance of a thing that lies in grant, and not in Livery, which cannot paſſe without Deed, as Advowſons, Services, Rents, Commons, Reverſions, and ſuch like. Of this alſo ſufficient likewiſe hath beene ſaid in the firſt Chapter of the firſt booke. 9. b. Lib.3.fo.63.in Lincolne Colledge caſe.

¶ *Releaſe, Confirmation, &c.* Of theſe ſhall bee ſpoken hereafter in their proper places and Chapters.

¶ *Obligation* is a word of his owne nature of a large extent, but it is commonly taken in the Common law, for a Bond containing a penalty with condition for payment of money, or to doe, or ſuffer ſome act or thing, &c. & a Bill is moſt commonly taken for a ſingle Bond without condition.

¶ *Ou auter ſcripture ſoit fait per aſcun de eux, &c.* Here by this (&c.) is implied ſome exceptions out of this generality, (d) as an Infant may bind himſelfe to pay for his neceſſary meat, drinke, apparell, neceſſary phyſicke, and ſuch other neceſſaries, and likewiſe for his good teaching or inſtruction, whereby he may profit himſelfe afterwards: but if he binde himſelfe in an Obligation or other writing, with a penalty for the payment of any of theſe, that Obligation ſhall not binde him. (e) Alſo other things of neceſſity ſhall bind them, as a preſentation to a Benefice, for otherwiſe the Laps ſhall incurre againſt him. Alſo if an Infant be an Executor, upon payment of any debt due to the Teſtator, he may make an acquittance, but in that caſe a releaſe without payment is voyd, and generally whatſoever an Infant is bound to doe by law, the ſame ſhall bind him, albeit he doth it without ſuit of law. But of this common learning this little taſte ſhall ſuffice.

(d) 18.E.4.2.21.H.6.31. Lib.9.fol.87.Pinchons caſe.

(e) 8.E.44. 9.H.6.5. 17.E.3.9. 29.Aſſ.25. 2 Mariæ Dyer.104.105.

¶ *Baylife ou Receiver al aſcun home, &c.* By this (&c.) many things are implyed, as that by Baylife is underſtood a ſervant that hath adminiſtration and charge of lands, goods, and Chattels, to make the beſt benefit for the owner, againſt whom an action of Account doth lie for the profits which he hath raiſed or made, or might by his induſtry or care have reaſonably raiſed or made, his reaſonable charges and expences deducted. (f) But one under the age of twenty one yeares ſhall not be charged in any ſuch account, becauſe by intendment of Law, before his full age he hath not skil and ability to raiſe or make any ſuch improvement and profit.

Fleta Li.2.ca.64. & c.67. Britton fol.62.70. Fleta Lib.2.cap.64. 41.E.3.39.46.E.3.Account 40.2.R.2.ibid 45. 6.R.2.ibid.3.E.3.10. (f) 13.E.3.Infant 9.17.E.2. Account 121.21.E.3.8. 10.H.4.14. 2.H.4.13. Regiſt.135.

An account againſt a Receiver, is when one receiveth money to the uſe of another, to render an account, but upon his account he ſhall not be allowed his expences and charges. (g) And therefore a man cannot charge a Baylife as a Receiver, becauſe then the Baylife ſhould loſe his expences and charges.

(g) 43.E.3.31.46.E.3.3.b. 4.H.6 27.

In an account againſt a Receiver, the Plaintife muſt declare by whoſe hands the Defendant received the money, which he ſhall not doe in the caſe of a Baylife. (h) But in ſome caſe in an action of Account againſt one as Receptor denariorum, he ſhall have allowance of his expences and charges, and alſo ſhall account for the profit he received, or might reaſonably receive, and this was provided by Law in favour of Merchants, & for advancement of trade and trafficke.

(h) 30.E.1. Account 127. 47.E.3.22.10.H.7.16. Bract.li.5.t.334.Brit.f.62. Fleta li.2.c.64.& 51. 5.E.3.1. Lib.Intrar.17.18.19.

As if two joynt Merchants occupie their ſtocke, goods, and merchandizes in common to their common profit, one of them naming himſelfe a Merchant, ſhall have an account againſt the other naming him a Merchant, and ſhall charge him as Receptor denariorum ipſius B. ex quacunque cauſa & contractu ad communem utilitatem ipſorum A. & B. provenien' ſicut per legem mercatoriam rationabiliter monſtrare poterit.

(i) If there be two Joyntenants or Tenants in Common of lands, and the one make the other his Baylife of his moity, he ſhall have an action of Account againſt him as Baylife: And ſo are the bookes to be intended, that ſpeake of an action of Account in that caſe.

(i) 45.E.3.10.3.E.3.27. 39.E.3.27. 47.E.3.22. F.N.B.118.

So as there be but three kinds of writs of Account, viz. againſt one as Gardian, whereof Littleton hath ſpoken before in the Chapter of Socage. The ſecond againſt one as Baylife: And the third, as Receiver, as here it appeareth. (k) For a man ſhall not be charged in an Account as Surveyor, Controller, Apprentice, Reve, or Heyward. And to maintaine an Action of Account, there muſt be either a privity in deed by the conſent of the partie, for (l) againſt a Diſſeiſor or other wrong doer no account doth lie, or a privity in Law ex proviſione legis, made by the Law, as againſt a Gardian, &c. whereof ſufficient hath been ſpoken in the Chapter of Socage.

(k) 13.E.3. Account 76. 41.E.3.ibidem 34. 8.E.3.46. 8.E.4.6.b. F.N.B.119.d. (l) 2 Mar.B.Account 89. F.N.B 117.P.Com.542. 2.H.4.12.33.H.6.2.4.H.6. 6.&c.

¶ *Ne*

Max.

¶ *Ne ſerra jure en un Enqueſt, &c.* By this (&c.) is implyed a maxime in Law, (m) quod minor jurare non poteſt. For example, (n) An Infant cannot make his Law of Non ſummons: (o) And therefore the default ſhall not grieve him, for ſeeing the meane to excuſe the default is taken away by Law, the default it ſelfe ſhall not prejudice him. But yet this rule hath an exception, That (p) an Infant when he is of the age of 12. yeares, ſhall take the Oath of Allegiance to the King: and this was, as Bracton ſaith, Secundum leges Sancti Edwardi. But indeed ſuch was the Law in the time of King Arthur, (q) An Infant cannot upon his oath make his law in an action of debt. (r) And the husband and wife of full age for the debt of the wife, before the coverture ſhall make their Law.

(m) Bract.lib.5.fol 340.b.
(n) 13 E.3.Ley 50.
(o) 26.E.3.63. 2.Mariæ Dyer 104,105.
(p) Vid.devant Cap.de Homage & Cap.de Fealty Sect.85 91. Bract.li.2.fo.124. Britton fo.73.74.& fol.19. Fleta lib.1.cap.17.
(q) 1.H.6.40.1.H 7.25. 15.E.4.2.
(r) 46.E.3.10. 9.E.4.24. 15.E 4.2. 21.H.3.23.

Section 260.

¶ *A terreen fee ſimple eſt allot a la file puiſne.* It is firſt to be obſerved upon this whole caſe, that the feeſimple land is allotted to the yongeſt daughter, & the land entailed to the eldeſt. This partitiõ prima facie is good, and herein the partition differeth from the exchange, where in the exchãge the eſtates muſt be equal.

But yet this partitiõ by matter ſubſequent may become voidable, (as Littletõ here puts the caſe) the eldeſt coparcener hath by the partitiõ & the matter ſubſequẽt barred her ſelf of her right in the fee ſimple lands, inſomuch as when the youngeſt ſiſter alieneth the fee ſimple lands & dieth, & her iſſue entreth into halfe the lands entailed, yet ſhall not the eldeſt enter into halfe of the lands in fee ſimple upon the Alience, for by the alienation, the pertitte of the ſtate is deſtroyed.

¶ *Le puiſne file alien la terre ẽ fee ſimple, &c.* The ſame law it is, & the yõgeſt daugh-

¶ Item ſi terres ou Tenements ſoyent dones a un home en le taile, quel ad tant des terres en fee ſimple, et ad iſſue deux files, et devie, & ſes deux files fõt partition enter eux, iſſint que la terre en fee ſimple eſt allot a le file puiſne en allowance dꝰ terres & tenements tailes allottes a le file eigne, ſi apres tiel partition fait, la puiſne file alienaſt la terre en fee ſimple a un auter en fee, & ad iſſue fits ou file & devie, liſſue poit bien entrer en les Tenemẽts tailes & eux tener & occupier en purpartie ovesque ſon Aunt. Et ceo eſt pur deux cauſes: un eſt, pur ceo que liſſue ne poit aver aſcun remedie de la terre alien p ſa mere, pur ceo que la terre fuit a luy en fee ſimple, & pur tant que il eſt un de les heires en taile, & nad my aſcun recompence de ceo que a luy affiert de les Tenements tailes, il eſt

ALſo if Lands or Tenements be given to a man in taile, who hath as much land in fee ſimple, and hath iſſue two daughters and die, and his two daughters make partition betweene them, ſo as the Land in Fee-ſimple is allotted to the younger daughter, in allowance for the lands and Tenements in Taile allotted to the elder daughter, if after ſuch partition made, the younger daughter alieneth her land in fee ſimple, to another in fee, and hath iſſue a ſon or daughter and dies, the iſſue may enter into the lands in taile, and hold and occupy them in purparty with her aunt. And this is for two cauſes: one is, for that the iſſue can have no remedie for the land ſold by the mother, becauſe the land was to her in fee ſimple, and in as much as ſhe is one of the heires in taile, and hath no recompẽce of that which belongeth to her of the lands in taile, it is reaſon

reaſon

reason que el eit sa purparty ô les tents tailes, & noſnement quant tiel partition ne fait aſcun diſcontinuance.

¶ Mes le contrary eſt tenus M.10.H.6.s. que le heire ne poit enter ſur l'Parcener que ad la terre taile, mes eſt mis a Formedon*

that ſhe hath her portion of the Lands tailed, and namely when ſuch partition doth not make any diſcontinuance.

¶ But the contrary is holden *M.10.H.6.* s. that the heire may not enter upon the parcener who hath the intailed land, but is put to a *Formedon**

ter had made a gift in tayle, for the Reverſion expectant upon an eſtate tayle is of no account in Law, for that it may bee cut off by the tenant in tayle. Otherwiſe it is of an eſtate for life or yeares. If in this caſe the youngeſt Daughter alien part of the Land in Fee ſimple, & dieth, ſo as a full recompence for the land entailed deſcends not to her iſſue, ſhe may waive the taking of any profits thereof, and enter into the Land entailed, for the Iſſue in tayle ſhall never be barred without a full recompence, though there be a warranty in Deed or in Law deſcended. If on the other ſide the eldeſt Coparcener alien the land entailed and dyeth, her Iſſue ſhall have a Formedon alone for the whole land entailed: for ſo long as the partition continueth in force, ſhe is onely inheritable to the whole Land entailed.

vncor vid: 174 b*

¶ *Et nad my aſcun recompence.* This is intended, as it appeareth, of a full recompence.

¶ *Tiel partition ne fait aſcun diſcontinuance.* And the reaſon thereof is, for that it paſſeth not by Livery of ſeiſin, but the partition is in truth leſſe than a grant, for that it maketh no degree, but each Coparcener is in by deſcent from the common Anceſtor. See more of this in the Chapter of diſcontinuance. Sect. 1one.

¶ *Mes le contrary eſt tenus, &c.* This is no part of Littleton, and is contrary to Law, as appeareth by Littleton himſelfe, and beſides, the caſe intended is not truly vouched, for it is not in 10.H.6. but in 20.H.6. and yet there it is but the opinion of Newton obiter, by the way. Vid Fitz. tit. part. 1. 20.H.6.14.

Sect. 261.

UN auter cauſe eſt, pur ceo q̃ il ſerra tenu̇ la folly del eigne ſoer que el voit ſuffer ou agree a tiel partition, ou el puiſſoit aver ſi el voile, la moitie de la terre en fee ſimple, & ſon moitie des tenements en le taile, pur ſa purparty, & iſſint eſtre ſure ſans dammage.

ANother reaſon is, for that it ſhall be accounted the folly of the eldeſt ſiſter that ſhe would ſuffer or agree to ſuch a partition, where ſhe might if ſhee would have had the moity of the Land in Fee Simple, and a moity of lands entailed for her part, and ſo to be ſure without loſſe.

¶ *UN auter cauſe, &c.* This is another reaſon, to prove that by the partition the eldeſt daughter hath concluded her ſelfe, as is aforeſaid.

¶ *Son moitie des terres en le tail.* For if a Writ of Partition had beene brought, the eldeſt ſhould not have beene compelled to take the whole eſtate in taile, for the prejudice that might after enſue, but might have challenged the one moity of the Lands in taile, and another moity of the Lands in Fee ſimple, and this ſhe might doe ex proviſione legis. But when ſhe will not ſubmit her to the policie and proviſion of the Law, but betake her ſelfe to her owne policy and proviſion, there the Law will not ayde her, as here by Littleton it manifeſtly appeareth. And ſo it is in the other caſe. (*) As if a man be ſeiſed of three Manors of equall value in fee, & taketh wife, and chargeth one of the Manors with a Rent charge, and dyeth, ſhe may by the proviſion of the Law take a third part of all the Manors and hold them diſcharged, but if ſhe will accept the entire Manor charged, it is holden that ſhe ſhall hold it charged. (*) 16.E.3.dower 133. 17.E.2.tit.dower 164. 18.H.6.27.

Dyer 1. Mar. 98.

A partition of lands intailed betweene Parceners, if it be equall at the time of the partition shall bind the issues in taile for ever, albeit the one doe alien her part.

But here it may be demanded, that seeing Littleton saith, that it shall be taken to be the folly of the eldest Parcener, &c. what if so be the eldest did not know of the estate taile either in respect of the antiquity thereof, or for want of having of the evidence, or for any other cause, what folly can be imputed to her?

The answer is, That it is presumed in Law, that every one is consonant of her right and title to her own land, and on the other side it should be arrected great folly in her to be ignorant of her owne title. And therefore the reason of Littleton doth firmly hold.

Section 262.

BEfore it appeareth that when the privity of the estate is destroyed by the feoffment of one Coparcener, that upon eviction of a moity by force of an entayle against the other she shall not enter upon the alienee. But in this case that Littleton here putteth, when the privity of the state remaineth, and the part of the one is evicted, (*) she shal enter and hold in Coparcenary with her other coparcener, and so it is in the case of an exchange. By reason of the (&c.) in the end of this Section there may two questions be justly demanded; what if the whole estate in part of the purparty of one Parcener be evicted by a title paramount? whether is the whole partition avoyded, for that Littleton here putteth the case that the whole purpartie of the one is defeated?

The second question is whether if but part of the state of one Coparcener be evicted, as an estate in tail, or for life, leaving a reversion in the coparcener, whether that shal avoid the partition in the whole?

To the first it is answered, that if the whole estate in part of the purparty bee evicted, that shall avoyd the partition in the whole, bee it of a Mannor, that is entire, or of acres of ground, or the like, that bee severall, (n) for the partition in that case implyeth for this purpose both a warrantie and a condition in Law, and either of them is entire, and giveth an entrie in this case into the whole. And so hath

(*) 15. E. 4. 3. a. per Littleton, lib. 4. fo. 121. 122. Baltards Case.

(n) 13. E. 4. 3. 42. Ass. 22.

CAr vy si home soit seise en fee dun carve de terre per just title, & dis-seisist un enfãt deins age dun auter carve, & ad issue deux files, & morust seisie dambideux carves, lenf. adonqz esteant deins age, & les files entront & font partition, issint q̃ lun carve est allotte al purparty lun, come per case al puisne en allowãce dauter carve que est allotte a le purparty de lauter, si puis lenf. enter en le carve dont il fuit disseisist sur l' possession la Parcener que ad mesme le carve, donqz m̃ le Parcener poit entrer en lauter carve que sa soer ad, & tener en Parcenary ovesqz luy: Mes si le puisne aliena m̃ la carve a un auter en fee simple devant lentrie lenf. & puis lenf. enter sur le possession lalienee, don-

ALso if a man bee seised in fee of a carve of land by just title, and hee disseise an Infant within age of another Carve, and hath issue two daughters, and dieth seised of both Carves, the Infant being then within age, and the daughters enter and make partition, so as the one Carve is allotted for the part of the one (as per case to the youngest in allowance of the other Carve which is allotted to the purpartie of the other) if afterward the Infant enter into the Carve whereof he was disseised upon the possession of the Parcener which hath the same Carve, then the same parcener may enter into the other Carve which her sister hath, and hold in Parcenary with her. But if the yongest alien the same Carve to another in fee before the entry of

que

que el ne poit enter en lauter carve, pur ceo que per son alienation el ad luy tout oustermẽt dismisse daver ascun part de les tenements come parcener. Mes si le puisne devant lentrie lenfant fait de ceo un lease pur terme dans, ou pur terme de vie, ou en fee tayle, savant la reversion a luy, & puis lenfant enter, la peraventure autrement est, pur ceo que el ne soy dismisse de tout ceo que fuit en luy, mes ad reserve a luy le Reversion & le fee, &c.

the Infant, and after the Infant enter upon the possession of the Alienee, then she cannot enter into the other Carve, because by her alienation she hath altogether dismissed her self to have any part of the Tenements as parcener. But if the youngest before the entry of the Infant make a Lease of this for terme of yeares, or for terme of life, or in Fee Tayle, saving the reversion to her, and after the Infant enter, there peradventure otherwise it is, because she hath not dismissed her selfe of all which was in her, but hath reserved to her the reversion, & the fee, &c.

it beene lately resolved (o) both in the case of exchange and of the partition.

(o) Bastards case. Lib. 4. fol. 121.

To the second, if any estate of freehold be evicted from the Coparcener in all or part of her purparty, it shall be avoyded in the whole. As if A. bee seised in fee of one acre of land in possession, and of the reversion of another expectant upon an estate for life, and hee disseise the Lessee for life who makes continuall clayme. A. dyeth seised of both Acres, and hath Issue two daughters, partition is made, so as the one Acre is allotted to the one, and the other Acre to the other, the Lessees enter, the partition is avoided for the whole, and so likewise hath (p) it beene lately resolved.

(p) Bastards case, ubi supra.

(q) Yet there is a diversity betweene the Warranty, and the condition which the Law createth upon the partition, where one Coparcener taketh benefit of the condition in Law she defeateth the partition in the whole.

(q) Vid. 5. E. 3. tit. voucher 249.

But when shee voucheth by force of the warranty in Law for part, the partition shall not bee defeated in the whole, but she shall recover recompence for that part. And therein also there is another diversity betweene a recovery in value by force of the warranty upon the exchange & upon the partition: for upon the exchange he shall recover a full recompence for all that he loseth: But upon the partition she shall recover but the moity or halfe of that which is lost, to the end that the losse may be equall.

Many other diversities there be betweene exchanges and partitions, for there are more and greater privities in case of partition in persons, bloud & estates, than there is in exchanges, all which were too tedious to rehearse in this place, seeing so much as hath beene said herein is sufficient for the explanation of the cases of partition which Littleton hath put.

18. E. 2. tit. aid 171. 19. H. 6. 26.

¶ *Donques el ne poet enter en lauter carve, &c.* By this is also approved that which hath been often said before, that when the whole privity betweene Coparceners is destroyed, there ceaseth any recompence to be expected either upon the condition in Law, or warranty in Law by force of the partition.

¶ *Per son alienation el ad luy tout ousterment dismisse daver ascun part de les tenements come parcener.* Hereupon it followeth, that if one Parcener maketh a feoffment in fee, and after her feoffee is impleaded and voucheth the Feoffor, (r) she may have aid of her Coparcener to deraigne a warranty Paramount but never to recover pro rata against her by force of the warranty in Law upon the partition. for Littleton here saith, that by her alienation she hath dismissed her selfe to have any part of the Land as Parcener. And without question as Parcener she must recover pro rata, upon the warranty in Law against the other Parcener.

(r) 41. E. 3. 24. 11. H. 4. 22. 23. 14. E. 3. aid 24.

And yet in some case the Feoffee of one Coparcener shall have aid of the other Parceners to deraigne the warranty paramount, and therefore (a) if there be two Coparceners, and they make partition, and the one of them infeoffes her sonne and heire apparant and dieth, the sonne is impleaded, albeit he be in by the feoffement of his mother, yet shall he pray in aid of the

(a) 43. E. 3. 23. Pl. Com. 4. E. 3. 15. 5. E. 3. 7. 38. E. 3. 17. &c.

(b) 32.E.1.tit.Aid 178. 3.E.2.ibid.163. the other Coparcener to have the warranty Paramount; and the reason (b) of the granting of this aid is for that the warranty betweene the mother and the sonne is by law annulled, and therefore the Law giveth the son albeit he be in by feoffment to pray in ayd of the other parcener, to deraigne the warranty Paramount, wherein is to be observed the great equity of the Common Law in this case:

Ipsæ etenim leges cupiunt ut jure regantur.

(*) 2.H.6.16. (*) But if a man be seised of lands in fee and hath issue two daughters, and make a gift in taile to one of them, and dye seised of the reversion in fee which descends to both sisters, and the Donee or her issue is impleaded, she shall not pray in ayd of the other Coparcener either to recover Pro rata, or to deraigne the warranty Paramount, for that the other sister is a stranger to the state taile, whereof the eldest was sole Tenant, and never partition was or could be thereof made.

¶ *Mes si le puisne devant lentrie lenfant fait de ceo un lease, &c. ou en fee taile savant le reversion a luy, &c.* This (upon that which hath beene said) needeth no explanation. Only this is to be observed, that albeit it is in the power of tenant in tail to cut off the reversion, yet if the infant enter before it be cut off, the Law hath such consideration of this reversion, that she that loseth it shall enter into her sisters part, and hold with her in Coparcenary, for that the privity betweene them was not wholly destroyed. v.175.a.

Sect. 263.

¶ Item si soiēt trois ou quater parceners, &c. q̄ font partition entre eux, si le part dun parcener soit defeat p̄ tiel loyal entrie, el poit ent̄r & occupier lauter terres obesq̄ touts les auters parceners, & eux compell̄ de faire novel partition de lauters terres, entre eux, &c.

ALso if there be three or foure Coparceners, &c. which make partition betweene them, if the part of the one parcener be defeated by such lawfull entrie, she may enter and occupie the other lands with all the other parceners, and compell them to make new partition betweene them of the other lands, &c.

¶ *Inter eux, &c.* This (&c) implyeth that so it is betweene the survivinq Parceners, and the heires of the other, or betweene the heires of Parceners, all being dead.

Sect. 264.

¶ *Le Baron soy tiēt eins cōe tenant per le curtesie.* This is no severance of the state in Coparcenary, (b) for the other Coparcener and the tenant by the Curtesie shall be joyntly impleaded, for he doth continue the state of Coparcenary, as the other Parcener did. (b) 24.E.3.29. 31.E.3. Briefe 339. 9.E.4.13. 19.H.6.26. 3.H.6.26. 3.H.6. Ass.1. 37.H.6.8. 21.E.3.14.

¶ *Vers le tenant*

¶ Item si sont deux parceners, & lun prent baron, & le baron & sa feme ont issue enter eux, & la feme deby, & le baron soy tient eins en le moity com̄ tenant per le curtesie, en ceo cas le parcener q̄ survesquist, & le tenant per le curtesie bien poient faire partition

ALso if there bee two parceners, and the one taketh husband and the Husband and wife have issue betweene them, and his wife dieth, and the husband keepes himselfe in as tenant by the curtesie, In this case the parcener which survi-

tition enter eux, &c. Et si le tenant per le curtesie ne voit agreer al partition destre fait, donques le parcener que survesquist poit aver envers le Tenant per le curtesie, briefe De partitione facienda, &c. & luy compeller de faire partition. Mes si le tenant per le curtesie voile aver partition enter eux destre fait, & le parcener que survesquist ne voit ceo aver, donque le tenant per le curtesie navera accũ remedy pur aver partition, &c. Car il ne poit aver briefe de Partitione facienda, pur ceo que il nest parcener, car tiel briefe gist pur parceners tantsolement. Et issint poyes veyer que briefe de Partitione facienda gist envers tenant per le curtesie, & uncore il mesme ne poit aver tiel briefe.

veth, and the tenant by the curtesie may well make partition between them, &c. And if the tenant by the curtesie will not agree to make partition, then the parcener which surviveth may have against the tenant by the curtesie a writ *De partitione facienda, &c.* & compel him to make partition. But if the tenant by the curtesie would have partition to be made between them, and the parcener which surviveth will not have this, then the tenant by the curtesie cannot have any remedy to have partition, &c. For hee cannot have a writ of *partione facienda*, because he is no parcener. For such a Writ lyeth for parceners only. And so you may see that a writ of *partitione fac'* lyeth against tenant by the curtesie, and yet he himselfe cannot have the like Writ.

per le curtesie brief de partitione facienda, &c. Here by the &c. is implyed that albeit that the Tenant by the curtesie be an estrãger in blood yet the (c) writ De Partitione fac' clearly lies against the tenant by the curtesie, because hee continueth the estate of Coparcenary. (c) 3.E.3.47.9.E.3.13. 16.E.3.Aid.129. 19.E.3.ibid.144.

If two coparceners be, and one doth alien in fee, they are tenants in common, & severall writs of Præcipe must be brought against thẽ and yet the Parcener shal have a writ of partition against the alienee at the Cõmon law which is a farre stronger case than the case put of Tenant by the Curtesie. 28.E.3.5. 19 H. 6.26.b.

¶ *Tiel briefe gist pur Parceners tantsolement.* Hereby it appeareth that neither the Tenant by the curtesie, nor (much lesse) the Alienee of a Coparcener shall have a writ of Particione fac' at the Common Law, for Littleton saith here, that such a writ lyeth onely for Parceners, *but it may be brought by a Parcener against strangers as it appeareth before. (*) 3.E.47.48.

But a Nuper obiit and a Rationabile parte doe lie onely betweene two Coparceners on both sides.

If three Coparceners be, and the eldest doth purchase the part of the youngest, the eldest having one part by descent, and the other by purchase shall have a writ of Partition at the Common Law against the other middle sister; Et sic de similibus. And so it is in a far stronger case, if there be three Coparceners, and the eldest taketh husband, and the husband purchase the part of the youngest, the husband for his part is a stranger and no Parcener, and yet he and his wife shall have a writ of Partition against the middle sister at the Common Law because he is seised of one part in the right of his wife who is a Parcener. Dier.1.Mariæ 94. F.N.B.52.Regist.

¶ *Pur aver Partition, &c.* Here by this (&c.) is included all others that be strangers in bloud, whether they come to their estates by purchase or by act in Law. Since Littleton wrote, by the Statutes (d) one Joyntenant or Tenant in common may have a writ of Partition against the other, and therefore at this day the Alienee of one Parcener may have a writ of Partition against the other Parcener, because they are Tenants in common and the like had beene attempted in former Parliaments (*) but prevailed not until these latter Statutes. (d) 31.H.8.cap.1. 32.H.8.cap.32. Vide.Sect.290. (*) Rot.Parl.1.R.2.nu.22.

(e) The Tenant by the Curtesie shall have a writ of Partition upon the Statute of 32.H.8. on.11. (e) Brook tit. Partition.

32. H. 8. ca. 32. for albeit he is neither Joyntenant nor Tenant in Common, for that a Præcipe lyeth against the Parcener and Tenant by the Curtesie, as hath been sayd, yet he is in equall mischiefe as another Tenant for life.

(f) Mich. 7. & 8. Eliz. Beadloes inter Wotton & Cooke. Dier. 3. Mariæ. 128. A. & 7. Eliz. 243.

(f) If there be three Coparceners and a stranger purchase the part of one of them, he and one other of the Coparceners shall not joyne in a writ of Partition, neither by the Common Law, nor by force of the statute, for the words of the Preamble of the statute be (And none of them by the Law doth or may know their severall parts, &c. and cannot by the Lawes of this Realme make partition thereof, without other of their mutuall assents. &c.

Now in this case the one of the plaintifes, viz. the Parcener may have a writ of Partition at the common Law, and the other Parcener being a purchaser may have it by the statute, and therefore they shall not joyne in one writ.

Chap. 2. Parceners by Custome. Sect. 265.

See before all the Ancient Authors of the Law concerning Gavelkinde, ubi supra. Lambert verbo Terra escripta.

(g) 5. E. 4. 8. b. 21. E. 4. 56. b. Plo. Com. 129. b. in Buckleis case. Vide Sect. 8. versus finem.

¶ *Mes il covient en le Declaration de faire mention de le custome.*

Well said Littleton, (g) That he in his Declaration must make mention of the Custome, as to say, That the land is of the Custome of Gavelkinde, but hee shall not prescribe in it. And so is it of Burgh English, & these two vary in that point from other customes, for the Law, when they are generally alledged, taketh knowledge of these two.

(h) Berocheshire, Hereford.

In (h) Domesday it is thus said, Duo fratres tenuerunt in paragio, quisque habuit aulam suam, & potuerint ire quo voluerint.

¶ *Auxy tiel custome est en auters lieux Angleterre.* Of this sufficient hath beene said before. 140. a

¶ *North Gales.*

(i) Lamb. verb. Welshmen Silvester Giraldus.

Wales, Wallia, It commeth (i) of the Saxon word Wealh which signifieth peregrinus, or exter, for the Saxons so called them, because in troth they were strangers to thē, being the remaine of the old and ancient Brittons, a wise and warlike Nation, inhabiting in the west part of England. These men have kept their proper language for above these thousand yeares past, and they to this day call us Englishmen Saisons, (that is) Saxons. And the like Custome as our Author here saith, was in North Wales, was also in Ireland, for there the Lands also (which is one marke of the ancient Brittons) were of the nature of Gavelkinde: but where by their Brehon Law the Bastards

¶ Parceners ꝑ le custome sont lou home seisie ē fee simple, ou en fee taile ō terrs ou tenemẽts q̄ sōt ō tenur̄ appel Gavelkind deins l' Coũty de Kēt, & ad issue diūs fits & devie, tielx terrs ou tẽements discenderōt a touts les fits per le custome & ovelment enheriterōt & ferront ptition enter eux per le custome, sicome females terront, & hẽ de Partitione facienda gist en ceo cas, sicome enter females, mes il covient en la declaration de faire mention de l' custom. Auxy tiel custome est en auters lieux Dengleterr̄. Et auxy tiel custome est en North Gales &c.

Parceners by the Custom are, where a man seised in Fee simple, or in fee tayle of Lands or Tenements which are of the Tenure called Gavelkinde within the Countie of Kent, and hath issue divers sonnes and die, such Lands or Tenements shall descend to all the sons by the Custome, and shal equally inherit & make partition by the custom, as females shall doe, and a writ of Partition lieth in this case as betweene females, but it behooveth in the Declaration to make mention of the Custome. Also such Custome is in other places of England, and also such custome is in North-Wales, &c.

tards inherited with their legitimate ſons, as to the Baſtards that cuſtome was abolished. And agreeing with Littleton in this point, ſee an old Statute. * Aliter uſitatum eſt in Wallia, quam in Anglia, quo ad ſucceſſionem hæreditatis, eo quod hæreditas partibilis eſt inter hæredes maſculos, à tempore cujus non extitit memoria, partibilis extitit, Dominus Rex non vult quod conſuetudo illa abrogetur, ſed quod hæreditates remaneant partibiles inter conſimiles hæredes ſicut fieri conſuevit, & fiat partitio illius ſicut fieri conſuevit.

Vide Sect. 212.

* Stat. Walliæ, an. 12. E. 2.

¶ *Parceners per le Cuſtome, &c.* well ſaid Littleton, By the Cuſtome, for ſons are Parceners in reſpect of the cuſtome of the Fee or Inheritance, and not in reſpect of their perſons, as daughters and ſiſters, &c. be. (h) Et ſunt participes quaſi partem capientes, &c. ratione ipſius rei quæ partibilis eſt, & non ratione perſonarum, quæ non ſunt quaſi unus hæres, & unum corpus, ſed diverſi hæredes, ubi tenementum partibile eſt inter plures cohæredes petentes qui diſcendunt de eodem ſtipite & ſemper ſolent dividi ab antiquo.

(h) Bract. lib. 5. fol. 428. Brit. cap. 71. Flet. lib. 5. cap. 9.

Sect. 266.

¶ Item il y ad aut partiē quel eſt dauter nature et dauter forme que aſcuns des partitiōs avantdits ſons. Sicome home ſeiſie de certain Terres en fee ſimple, ad iſſue deux files et leigne eſt mary, et le piere dona parcel de ſes terres a le baron ove ſa file en frankmariage, et mozuſt ſeiſie de le remnant, le quel remnant eſt de pluis greinder value per an, q̄ ſont les terres dones en Frankmariage.

ALſo there is another partitiō which is of another nature, & of another formę, than any of the partitions aforeſaid be. As if a man ſeiſed of certaine lands in Feeſimple, hath iſſue two daughters, and the eldeſt is maried, and the father giveth part of his Lands to the huſband with his daughter in Frankmariage, and dieth ſeiſed of the remnant, the which remnāt is of a greater yearely value than the lands given in Frankmariage.

¶ *Dona parcel de ſes terres a le baron ove ſa file en frankmariage.*

Here it appeareth, that a gift in Frankemarriage maybee made after marriage, as hath beene ſayd in the Chapter of Fee tayle.

¶ *Le quel remnant eſt de pluis greinder value per an, &c.* Admit that the lands given in Frankmarriage are of greater value than the lands deſcended in Fee ſimple, ſhall the other ſiſter habe any remedy againſt the Donees? it is plaine ſhee ſhall not, becauſe it is lawfull for a man to diſpoſe of his owne lands, at his will and pleaſure.

Sect. 267.

¶ En cel caſe le baron ne le fēe avera riens pur lour purpartie de le dit remnant, ſinon que ils voile mitter lour tres dones en frankmariage en Hotchpot ovesque le rem-

IN this caſe neither the husbād nor wife ſhall have any thing, for their purpartie of the ſaid Remnant, unleſſe they wil put their lands given in Frankmariage, in *Hotchpot*, with the rēnant of the

¶ *En cel caſe le Baron ne le Feme avera riens pur lour purpartie, &c.* (i) This gift in Frankmariage ſhall prima facie be intended a ſufficient advancement, and therefore the remnant ſhall deſcend to the other Coparcener onely with this proviſion in Law tacite annexed, that if the donees

(i) 8. H. 3. breve 880. 34. E. 1. nuper obiit 15. 2 diddge 4. E. 3. 49. 10. Aſſ. p. 14. Vid. 10. E. 3. 38. & 30. Aſſ. 7. Bracton lib. 2. fol 77. Lib 5. fol. 428. Brit. cap. 72. Fleta Lib. 6. cap 47.

nees will put the Land into Hotchpot, then she shall out of the remnāt make up her part equall, but the Donees must doe the first act, and in the meane time the whole fee simple lād descends to the other. And this is warranted here by Littleton, viz. That the Donees shall have nothing for the purpartie of the remnant, unlesse they will put their lands given in Frankemariage, in Hotchpot, so as the Donees must doe the first act, and more expresly after in this Chapter, where he directly saith, That the other sister shall enter into the remnant, & them to occupy to her owne use, unlesse the husbād and wife will put the lands given in Frankmariage, into Hotchpot. And herewith agreeth Fleta, who saith, Cum dicat tenens excipiendo, quod non tenetur petenti respondere, quia A. participem habet &c. replicari poterit a petente quod prædict. A. tenet quandam partem in maritagium de communi hæredit. nec valet illud in partem ponere. And here are three things (that I may speake once for all) to be observed. First, That in this speciall case where there be two daughters, one of them onely shall inherit the lands in fee simple. Secondly, That in this case there lieth no writ of Partition, because non tenent insimul & pro indiviso. Thirdly, If the Parcener to whom the land in fee simple descended, will not put the lands in Hotchpot, then may the Donees enter into the fee simple lands, and hold them in Coparcenarie with her.

nant de la terre obesq; sa soer. Et si illint ils ne voilent fayre, donqs le puisne poet tener & occupier ñ le remnande, & prendra a luy les profits tantsolement. Et ill semble que cest parol (Hotchpot) est en English, A Pudding, car en tiel Pudding nest communement mies un chose tantsolem̄t, mes un chose obesq; aurs choses ensemble. Et pur ceo il covient en tiel case de mitter les Terres Dones en frankmariage obesque les auters terres en Hotchpot, si le Baron & sa feme voilent aver asc̄ pt en les aurs tēs.

land with her sister. And if they will not doe so, then the youngest may hold and occupie the same remnant, and take the profits onely to her selfe. And it seemeth that this word (*Hotchpot*) is in English, A Pudding, for in this Pudding is not commonly put one thing alone, but one thing with other things together. And therefore it behooveth in this case to put the Lands given in frankmarriage with the other Lands in *Hotchpot*, if the husband and wife will have any part in the other Lands.

(k) Glawill lib.7. cap.5. Bracton lib.2.fol.60. Fleta lib.2.cap.5. Magna Carta cap.18.3. F.N.B.222.30.E.3.25. 31.E.3.Resp.60. 31.Ass.14. 37.E.2.Detinew. 37.E.3.17. 2.E.2.Detinew 56. 31.H.8.tit.rationab. parte bonorum 6. Lamb.f.119.68.

And it seemeth by our old bookes, (k) That by the ancient Law there was a kinde of resemblance hereof concerning goods. Si autem post debita deducta, & post deductionem expensarum quæ necessariæ erunt, id totum quod tunc superfuerit dividatur in tres partes, quarum una pars relinquatur pueris si pueros habuerit defunctus. Secunda, Uxori si superstes fuerit, & de tertia parte habeat testator liberam disponendi facultatem: si autem liberos non habeat, tunc medietas defuncto, & alia medietas uxori: si autem sine uxore decesserit liberis existentibus, tunc medietas defuncto, & alia medietas liberis tribuatur: si autem sine uxore & liberis, tunc id totum defuncto remanebit. And by the Law before the Conquest it * was thus provided, Sive quis in curia, sive morte repentine fuerit intestatus mortuus, dominus tamen nullam rerum suarum partem (præter eam quæ jure debetur) herioti nomine sibi assumito, verum eas judicio sub uxori, liberis, & cognatione proximis, juste pro suo cuique jure distribuito.

(l) Regist.142. 34.E.1.Detinew 60. 7.E.4.6.7.E.4.21. 43.E.3.38.

But it appeareth by the Register, (l) and many of our bookes, that there must be a custome alledged in some County, &c. to inable the wife or children to the writ de rationabile parte bonorum, and so hath it beene resolved in Parliament. (m) But such children as be reasonably advanced by the father in his life time with any part of his goods, shall have no further part of his goods, for the words of the writ be, Nec in vita patris promoti fuerunt.

(m) 3.E.3.Detinew 156. 40.E.3.18.

Note, the custome of London is, That if the father advance any of his children with any part of his goods, that shall bar the to demand any further part, unlesse the father under his hand, or in his last will do expresse and declare, That it was but in part of advancement, and then that child so partly advanced, shall put his part in Hotchpot, with the executors & widow, & have a full third part of the whole, accounting that which was formerly given unto him as parte thereof. And this is that in effect, which the Civilians call Collatio bonorum.

¶ *Et il ſemble que ceſt Parol (hotchpot) eſt en Engliſh*, a Pudding, *&c.* Littleton both here and in other places ſearcheth for the ſignification of words, in all Arts a thing moſt neceſſary, for ignoratis terminis, ignoratur & ars. Vide for Etymologies, Sect. 95. 119. 135. 154. 164. 204. 234. &c.

¶ *Hutſpot* or *Hotſpot*, is an old Saxon word, and ſignifieth ſo much as Littleton here ſpeaks. And the French uſe Hotchpot for a commixtion of divers things together. It ſignifieth here metaphorically in partem poſitio. In Engliſh we uſe to ſay Hodgepodge, in Latine Farrago or Miſcellaneum.

The reſidue of this Section needeth no explication.

Vide Brit. cap. 72. 4. E. 3. 49. 6. E. 3. 30. 10. E. 3. 3. & 24. E. 3. 27. F. N. B. 262. Regiſt. 120. Fleta lib. 6. cap. 47. Mich. 10. E. 1. coram Rege Herefordiæ theſaur.

Sect. 268.

¶ Et ceſt terme (Hotchpot) eſt proprement un terme ſimilitudinarie, & eſt a tant adire, ceſtaſcavoir, de mitter les terres en Frankmarriage, & les auters terres en fee ſimple enſemble, & ceo eſt a tiel entent de conuſter le value de touts les terres, ſ. de les terres dones en Frankmarriage, & de le remnant que ne fueront dones, & donqes partition ſerra fait en le forme que enſuiſt. Sicome, mittomus que home ſoit ſeiſie de 30. acres de terre en fee ſimple, cheſcun acre de value de 12. d. per an. & que il ad iſſue deux files, & lun eſt covert d baron, & le pier dona 10. acres de les 30. acres a le baron, ove ſa file en Frankmarriage, & morust ſeiſie de l'remnant donques lauter ſoer entra en le remnant, ſ. les 20. acres & eux occupier, a ſon uſe demeſne, ſi non que le baron et ſa feme voile mitter les 10. acres dones en Frankmarriage, ove les 20. acres en Hotchpot, ceſtaſcavoir, enſemble, & donque quant le value de cheſcun acre eſt conus, ceſtaſcavoir que cheſcun acre vault per an, & eſt aſſeſſe, ou enter eux agree, que cheſcun acre vault p an 12. d. donques le partition

AND this terme (*Hotchpot*) is but a terme ſimilitudinary, & is as much to ſay, as to put the lands in Frankmarriage, and the other Lands in Fee ſimple together, and this is for this intent, to know the value of all the Lands, *viz.* of the Lands given in Frankmarriage, & of the remnãt which were not given, & then partition ſhal be made in form following. As, put the caſe that a man be ſeiſed of 30. Acres of Land in Fee ſimple, every Acre of the value of 12. pence by the yeare, and that he hath iſſue two Daughters, and the one is Covert baron, and the Father gives 10. Acres of the 30. Acres to the Huſband with the Daughter in Frankmãrriage, and dyeth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, *viz.* into the 20. Acres, and ſhall occupie them to her owne uſe, unleſſe the husband and his wife will put the 10. Acres given in Frankmariage, with the 20. Acres in Hotchpot, that is to ſay, together; and then when the value of every Acre is knowne, to wit, what every Acre valueth by the year, and is aſſeſſed or agreed between them, that every Acre is worth by the yeare 12. pence: Then the partition ſhal be

ſerra fait en tiel forme, ceſtaſcavoir le baron & ſa feme averont ouſtre les 10. acres dones a eux en Frankmarriage 5. acres en ſeveraltie de les 20. acres, & lauter ſoer avera le remnant, ſ. 15. acres de les 20. acres pur ſa purpartie, iſſint que accomptant les 10. acres que le baron & ſa feme ount per le done en Frankmarriage, et les auters 5. acres de les 20. acres, le baron et ſa feme ont autant en annual value, que lauter ſoer ad.

made in this manner, *viz.* the Husband and Wife ſhall have beſides the 10. acres givē to them in Frankmariage 5. Acres in ſeveraltie of the 20. Acres, and the other ſiſter ſhall have the remnant, *viz.* 15. Acres of the 20. Acres for her purparty, ſo as accounting the 10. Acres which the Baron and Feme have by the gift in Frankmariage, and the other 5. Acres of the 20. Acres, the husband and wife have as much in yearely value as the other ſiſter.

Bract. lib. 2. fol. 77. lib. 5. fol. 428. Britt. cap. 72. & Fleta lib. 6. cap. 47.
4. E. 3. 49. 10. E. 3. 37.
(n) 10. E. 3. 37. 10. Aſſ. 14.
4. E. 3. 49.
(o) 29. Aſſ. 23.

AND herewith in expreſſe termes agreeth Bracton, Britton, and Fleta, and all the books aboveſaid and many others. And it is worthy the obſervation (n) that after this putting into Hotchpot, and partition made, the Lands given in Frankmariage, are become as the other Lands which deſcended from the common Anceſtor, and of theſe lands if ſhe be impleaded (o) ſhe ſhall have aide of the other Parcener as if the ſame Lands had deſcended. So the Coparcener that hath a Rent granted to her for owelty of partition, as is aforeſaid, hath the Rent, as if it had deſcended to her from the common Anceſtor.

Section 269.

ET iſſint touts foits ſur tiel partition, les terres dones en Frankmarriage demurgent a les Donees & a lour heires ſolonqz le forme de le done. Car ſi lauter Parcen̄ aūoit riens de ceo que eſt done en Frankmarriage, de ceo enſueroit inconviens, & choſe encounter reaſon, que la ley ne voit ſuffer. Et la cauſe pur que les terres dones en Frankmarriage ſerront mis en Hotchpot, eſt ceo, quant home done terres ou tenements en Frankmarriage ove ſa file, ou ove auter coſin il eſt, entendus per la ley que tiel done fait per tiel Parol (Frankmarriage) eſt un avancement, & pur avancement de ſa file, ou de ſon auter coſin, & noſmement

AND ſo alwaies upon ſuch partition the lāds givē in Frankmarriage remaine to the Donees and to their heires according to the forme of the gift: for if the other Parcener ſhould have any of that which is given in Frankmarriage, of this would enſue an inconvenience, and a thing againſt reaſon, which the Law will not ſuffer. And the reaſon why the Lands given in Frankmariage ſhal bee put in Hotchpot, is this, when a man giveth Lands or Tenements in Frankmariage with his Daughter, or with his other Couſin, it is intended by the Law that ſuch gift made by this word (Frankmariage) is an advancement, and for advancement of his daughter, or of his Couſin, and namely, when

quant

quant le donor et ſes heyres naveront aſcun rent ne ſervice de eux, ſinon que ſoit fealty, tanque le quart degree ſoit paſſe, &c. Et pur tiel cauſe la ley eſt que el avera riens de les auters terres ou tenemẽts diſcendus a lauter parcener. &c. ſinon que el voile mitter les terrs dones en frankmariage en Hotchpot, come eſt dit. Et ſi il ne voille mitter les terres dones en frankmariage en Hotchpot, donque el navera riens del remnant pur ceo que ſerra entendu per la ley que el eſt ſufficientment avance, a que avancement el ſoy agree & luy tient content.

the donor and his heires ſhall have no rent nor ſervice of them but fealtie, untill the fourth degree be paſt. And for this cauſe the Law is that ſhee ſhall have nothing of the other lands or tenements deſcended to the other parcener, &c. unleſſe ſhee will put the lands given in frankmariage in Hotchpot as is ſaid. And if ſhee will not put the lands given in frankmariage in Hotchpot, then ſhe ſhall have nothing of the remnant, becauſe it ſhall be intended by the Law, that ſhee is ſufficiently advanced, to which advancement ſhee agreeth and holds her ſelfe content.

¶ *De ceo enſueroit enconvenience & choſe encounter reaſon que la ley ne voet ſuffer.*

Quod eſt inconveniens aut contra rationem, non permiſſum eſt in lege. Hereby it appeareth, as it hath beene often noted, (*) that an argument ab inconvenienti aut ab eo quod eſt contra rationem, is forcible in Law. (p) Nihil enim quod eſt inconveniens, eſt licitum. Regula. (*) Vid. Sect. 138. 139. 311. 440. 478. 488. 722. (p) 40. Aſſ. 27. Sect. 30.

¶ *Tanque le 4. degree ſoit paſ, &c.* Here by (&c.) is implyed how the degrees ſhall be accounted, whereof ſufficient hath beene ſaid before. 23. b & 24. a

Sect. 270.

¶ Meſm̃ la ley eſt parenter les heires de les donees en frankmariage, et les autersparceners, &c. ſi les donees en frãkmariage deviont devãt lour aunceſtor, ou devant tiel partition, &c. quant a mitter en Hotchpot, &c.

THE ſame Law is between the heirs of the donees in frankmariage, and the other parceners, &c. if the donees in frankmariage die before their anceſtor, or before ſuch partition, &c. as to put in Hotchpot, &c.

¶ By theſe three (&c.) in this Section, is implied that if either the Donees die before the Anceſtor, or ſurvive the Anceſtor and die before ſuch a partition, or if the Donees & all the Parceners die before ſuch partition upon the putting into Hotchpot, their iſſues ſhall have the ſame benefit to put the lands into Hotchpot, for that benefit is heritable and deſcendible to the iſſues.

Sect. 271.

¶ Et nota que dones en frãkmariage fueront per

And note that gifts in frankmarriage were by the Common

¶ Continue, &c. By this (&c.) is to be underſtood that before the ſtatute it was a fee ſimple, and ſince

since the statute a feetaile. So as it is true, that (q) the gifts doe continue (as our Author here saith) but not the estates. For the estate is changed, as at large appeares in the Chapter of estates in taile. And albeit our Author here saith that such gifts have beene alwaies since used and continued, yet now they be almost growne out of use, & serve now principally for Moote cases and questions in law that thereupon were wont to rise.

(q) 12.H.4.11.31.E.3. Gard.116.

la common ley devant le Statute de Westm̄ second, et tout temps puis ad este use et continue &c.

Law before the Statute of Westm. second and have beene alwayes since used and continued,&c.

Sect. 272.

THE Lands given in frankmariage, and the lands in fee simple must move from one & the same Ancestor, for the lands given in Frankmariage are in respect of the advancement accounted in Law as hath beene said, as if the same had descended from the same Ancestor who died seised of the fee simple lands, and there is no reason to barre the Donee of her full part of the fee simple lands that descended from another Ancestor from whom shee had no such advancement.

ITem, tiel mitter en Hotchpot, &c. est lou les auters terres ou tenemēts q̄ ne fuer̄ dones en frankmariage descendont de les donors en frankmariage tantsolement, car si les terres descenderont a les files per le pier le donor, ou per le mere le donor, ou per le fre̅r̄ donor, ou auter ancestor, et nemy per le donor, &c. la auterment est, car en tiel cas el a quel tiel done en frankmariage est fait avera sa part sicome nul tiel done en frankmarriage ust este fait pur ceo q̄ el ne fuit avant̄ per eux, &c. eins per un auter, &c.

ALso such putting in Hotchpot, &c. is where the other lands or tenements which were not given in frankmariage descend from the donors in frankmariage onely, for if the lands shall descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other ancester, and not by the donor, &c. there it is otherwise, for in such case, shee to whom such gift in frankmariage is made, shall have her part as if no gift in frankm: had beene made, because that shee was not advanced by them, &c. but by another, &c.

ITem Nemy per le Donor &c. Here (&c.) impliteth no more but that Donor that made the gift of Frankmariage, the other two (&c.) in this Section need no explanation.

Sect. 273.

BY this Section and the (&c.) herein, some have gathered that the value of the lands shall bee accounted as they were at the time of the gift in

ITem, si home seisie de 30. acres de terre chescun acre de ovel annual value eiant issue deux files cōe est avantdit, et dona 15. acres de

ALso if a man be seised of 30. acres of Land, every acre of equall annuall value, and have issue two daughters as aforesaid, and giveth 15. acres

ceo

ceo a le baron ove ſa file en frankmarriage, & moruſt ſeiſie de les auters 15. acres, en ceſt caſe lauter ſoer avera les 15. acres iſſint diſcēdus a luy ſole, et le baron et ſa feme ne mitteront en tiel cas les 15. acres a eux dones en frankmarriage en Hotchpot, pur ceo q̄ les tenemēts dones ē frankmarriage ſont de aury grand et de bone annual value come les auters terres diſcendus, &c. Car ſi les terres dones en frankmarriage ſont de tant egal annual value, que le remnant ſont, ou de pluis value, en vaine et a nul entent tiels tenemēts dones en frankmariage ſerra mis en Hotchpot, &c. pur ceo que el ne poit riens aver de les auters terres diſcendus, &c. car ſi el aūoit aſcun parcel de les tenements diſcendus, donques el avera pluis de annual value que ſa ſoer &c. que la ley ne voit, &c. Et ſicome eſt parley ēles caſes avantdits de deux files ou de deux parceners, en ūn le manner eſt en ſemblable caſ lou ſont pluſors ſoers ou pluſors parceners, ſolonq̄ ceo q̄ caſe & l' matter eſt &c.

hereof to the Husband with his daughter in frankmariage, and dies ſeiſed of the other 15. acres. In this caſe the other ſiſter ſhall have the 15. acres ſo deſcended to her alone, and the husband and wife ſhall not in this caſe put the 15. acres given to them in frankmarriage into Hotchpot, becauſe the tenements given in frankmariage are of as great and good yearly value as the other lands deſcended, &c. for if the lands given in frankmariage be of equall or of more yearely value than the remnant, in vaine and to no purpoſe ſhall ſuch tenements given in frankmariage be put in Hotchpot, &c. for that ſhe cānot have any of the other lands deſcended, &c. for if ſhe ſhould have any parcell of the lands deſcended, then ſhe ſhal have more in yearly value than her ſiſter, &c. which the Law will not, &c. And as it is ſpoken in the caſes aforeſaid of two daughters or of two parceners, in the ſame manner it is in the like caſe where there are more ſiſters or more parceners according as the caſe and matter is, &c.

Frankmariage, but it is clear that the value ſhall bee accounted as it was at the time of the partition, for if the Donour purchaſe more land after the gift, or if the land given in Frankmarriage be by the act of God decayed in value, or if the remnant of the lands in fee ſimple be improved after the gift, or è converſo, the Law ſhall adjudge of the value as it was at the time of the partition, (unleſſe it bee by the proper act or default of the parties) as hath beene ſaid before in the former Chapter. And ſome have collected upon this Section that the reverſion in fee of the lands given in Frankmariage ſhall onely deſcend to the Donee, for otherwiſe the other After ſhall have more benefit than the Donee, which ſhould bee againſt the reaſon of our Author.

¶ *In vaine & anul entent, &c.* For it is a maxime in Law Lex non præcipit inutilia, quia inutilis labor ſtultus.

Regulæ Vid. Sect. 138. & 577. Lib. 5. fol. 89.

Max

Sect.

Sect. 274.

ET est asçavoir, que Terres ou tenemẽts dones en frankmariage ne serra mise en Hotchpot, forsque ou Terres discende en fee simple, car de terre discendus en fee taile Partition serra fait, sicome nul tiel done en frankmariage ust esse fait.

AND it is to be understood, that Lands or Tenements given in Frankmariage shall not be put in *Hotchpot*, but where Lands descend in fee simple, for of Lands descended in Fee taile partition shall be made, as if no such gift in Frankemariage had been made.

31.Ass.pla.14. OF Lands entailed, the Donee in Frankmariage shall have as much part as the other Coparcener, because over and besides the Land given in frankmariage, the Issue in Taile claimeth per formam doni, and both of the Parceners must equally inherit by force of the gift, & voluntas Donatoris, &c. observetur.

Sect. 275.

ITem nuls Terres serra mise en Hotchpot ove auters sinon terres que fueront done en frankmariage tantsolement: Car si ascun Feme ad ascuns auters terres ou tenements per ascun auter done en le tayle, el ne unques mittera tiel Terre issint done en Hotchpot, mes el avera sa purpartie de le remnant discẽdus &c. S, a tant que lauter Parcener avera ẽ mk remnant.

ALso no Lands shall be put in *Hotchpot* with other lands, but Lands given in Frankmariage only: for if a woman have any other Lands or Tenements by any other gift in taile, she shall never put such Lands so given in *Hotchpot*, but she shal have her purpartie of the remnant descended, &c. (*videlicet*) as much as the other Parcener shall have of the same remnant.

33.E.2.tit.Taile 26. 6.E.3.30.b.4.E.3.49.50. OF if the Ancestor infeoffeth one of his daughters of part of his Land, or purchase lands to him and her, and their heires, or giveth to her part of his lands in taile speciall or generall, she, notwithstanding this, shall have a full part in the remnant of the lands in fee simple, for the benefit of putting, &c. into Hotchpot, is onely appropriated to a gift in frankmariage, (quia maritagium cadit in partem) which shall be (as is aforesaid) accounted as parcell of her advancement.

Bract.lib.2.fol.77.

Section 276.

ITem un auter Partition poet este fait enter parceñs que variast de les Partitions avantdits. Sicome y sont trois Parceners, & le puisñ voet aver partition, & les auters deux ne voillont, mes violent tener en parcenarie ceo que a eux affi-

ALso another partition may be made betweene Parceners, which varieth from the Partitions aforesaid. As if there be three Parceners, and the youngest will have partition, and the other two will not, but will hold in parcenarie that which to them belonert

ert ſans partē, en cē caſe ſi un pt ſoit alot en ſeñalty al puiſne ſoer ſolonq̄ ceo que el doit aver, donques les auters poient tener le remnant en parcenarie, & occupier en common ſans partition ſi els voilēt, & tiel partition eſt aſſets bone. Et ſi apres leigne, ou le mulnes Parcener voile fayre partition inter eux, ō ceo que ils teignont, ils poient ceo bien faire quant a eur pleiſt. Mes lou partition ſerra fait per force de Briefe de partitione facienda, la autrement eſt, car la covient que cheſcun Parcener avera ſa part en ſeveraltie, &c.

geth, without partition: in this caſe if one part be allotted in ſeveralty to the youngeſt ſiſter, according to that which ſhee ought to have, then the others may hold the remnant in parcenarie, and occupie in Common without Partition, if they will, and ſuch partition is good enough. And if afterwards the eldeſt or middle parcener will make partition betweene them of that which they hold, they may well doe this when they pleaſe. But where partition ſhall be made by force of a writ of *Partitione facienda*, there it is otherwiſe, for there it behoveth that every parcener have her part in ſeveraltie, &c.

¶ Pluis ſerē dit des parceñs en le Chapter de Joyntenants, & auxy en le Chapter de Tenāts in Common.

More ſhall be ſaid of parceners in the Chapter of Joyntenants, and alſo in the Chapter of Tenants in Common.

HEre it is to be obſerved, That this partition is good by conſent, for Conſenſus tollit errorem, but if it be by the Kings Writ, then every Parcener muſt have his part. And here you may ſee that modus & conventio vincunt legem. 24.H.3.tit.Partic.18. Regula.

¶ *En ſeveraltie, &c.* Here by this (&c.) is implied another kind of ſeveraltie than our Author hath mentioned, and that is, That the one Parcener ſhall have the land in ſeveraltie from the feaſt of Eaſter, untill the gule of Auguſt, (that is, the firſt of Auguſt) & the other in ſeveraltie from thence untill the feaſt of Eaſter, or the like, & ſic alternis vicibus to them and their heires in perpetuum, whereof ſufficient hath beene ſpoken before. 167. a. v. Cowell Interp. (Gule).

Reg:

Chap.3. Of Joyntenants. *Sect.277.*

¶ Joyntēnts ſont, ſicome home ſeiſie de certaine Terrs ou Tenements, &c. & enfeoffe deux, trois, quater, ou pluſorz, a aver & tenē a eux pur term de lour vies, ou a terme dauter vie, p force de quel feoffement ou leaſe ils ſont ſei-

Joyntenants are, as if a man bee ſeiſed of certaine Lands or Tenements, &c. and infeoffeth two, three, foure, or more, to have and to hold to them for term of their lives, or for terme of anothers life, by force of which feoffement or

¶ This agreeth not with the Originall for it ſhould bee Joynt' ſont ſicome home ſeiſie de certaine terres ou tenements, &c. & ent feoffe deux ou trois, ou quater, ou pluſors & aver & tener a eux & a lour heires ou leſſa a eux pur terme de lour vies, ou pur terme dauter vie, per force de quel feoffement, ou leaſe, &c. The error may eaſily bee perceived by that which is in print. viz. By force of which feoffement or leaſe, &c. ergo there muſt be

Bract.lib.4.fol.262. Brit.ca.35.& fol.112. Flet.lib.3.cap.4.10. & lib.6.cap.47.

be feoffement and leafe ſpoken of before.

Joyntenants ſies, tiels ſont Joyntenants.

There be alſo Joyntenants by other conveyances than Littleton here mentioneth, as by Fine, Recoverie, Bargaine and Sale, Releaſe, Confirmation, &c. So there be divers other limitations than Littleton here ſpeaketh of: As if a Rent charge of ten pounds be granted to A. and B. to have and to hold to them two. viz. to A. untill he be maried, and to B. untill he be advanced to a Benefice, they bee Joyntenants in the meane time, notwithſtanding the ſeverall limitations: and if A. die before marriage, the rent ſhall ſurvive; but if A. had married, the rent ſhould have ceaſed for a moitie, & ſic è converſo on the other ſide.

7.E.4.29.11.H.4.26. Littleton having ſpoken of one kinde of Tenants pro indiviſo, viz. of Parceners, commeth now to another, viz. Joyntenants, and firſt of Joyntenants of Freehold. If an Alien and a ſubject purchaſe lands in fee, they are Joyntenants, and the ſurvivorſhip ſhall hold place, Et nullum tempus occurrit regi, upon an office found.

¶ *Joyntenants.* So called, becauſe the lands or tenements, &c are conveyed to them ioyntly, conjunctim feoffati, &c. or qui conjunctim tenent, and are diſtinguiſhed from ſole or ſeverall Tenants, from Parceners and from Tenants in Common, &c. and anciently they were called Participes, & non hæredes. And theſe Joyntenants muſt ioyntly implead and ioyntly be impleaded by others, which propertie is common betweene them and Coparceners, but Joyntenants have a ſole qualitie of ſurvivorſhip, which Coparceners have not. Littleton having now ſpoken of Parceners and of Joyntenants of right, doth next ſpeak of Joyntenants by wrong.

Flet.lib.6.cap.47. Bract.lib.5.fol.435.a.

v. 280

Sect. 278.

¶ It is to bee obſerved, That ſome Diſſeiſors be Tenants of the land, and ſome bee no Tenants of the Lands, & of both theſe kinds Littleton here ſpeaketh.

Item ſi deux ou trois, &c. diſſeiſont un auter daſcun terres ou Tenements a lour uſe demeſne: donques les Diſſeiſours ſont Joyntenants. Mes ſils diſſeiſōt un auter al uſe dun de eux, donques ils ne ſont Joyntenants, mes celuy a que uſe le diſſeiſin eſt fait eſt ſole tenant, & les auters nont riens en le tenancie, mes ſont appels coadjutors a le Diſſeiſin, &c.

Also if two or three &c. diſſeiſe another of any lands or tenements to their owne uſe, then the diſſeiſors are Joyntenants. But if they diſſeiſe another to the uſe of one of them, then they are not Joynetenants, but hee to whoſe uſe the Diſſeiſin is made, is ſole Tenant, and the others have nothing in the Tenancy, but are called Coadjutors to the Diſſeiſin, &c.

54.E.3.2.17.Aſſ.14. 14.Aſſ.12.8.Aſſ.p.30. 20.E.3.47.13.Aſſ.22. 23.H.8.tit.Diſſeit.b.77. 28.Aſſ.21.27.Aſſ.30. 12.E.4.9.7.E.4.7.b. 38.Aſſ.7.21.H.7.35. 29.Aſſ.50.21.H.8.25. 35.H.6.61.21.E.4.46. 15.E.4.15.F.N.B.179.g.

&c. In the firſt &c. nothing is implied but foure or five, or more, but in the latter &c. many things be to bee underſtood, as of Diſſeiſors that be no Tenants, ſome are Coadjutors, whereof Littleton here ſpeaketh, ſome Counſellors, Commanders, &c. when the diſſeiſin is not to bee done to any of their uſes. Alſo if A. diſſeiſe one to the uſe of B. who knoweth not of it, and B. aſſent to it, in this caſe till the agreement, A. was Tenant of the land, and after agreement B. is tenant of the land, but both of them be Diſſeiſors: for omnis ratihabitio retrotrahitur & mandato equiparatur. And it is worthy of the obſervation, and implied alſo in the latter (&c.) that ſeeing Coadjutors, Counſellors, Commanders, &c. are all Diſſeiſors, that albeit the Diſſeiſor which is Tenant dieth, yet the Aſſiſe lieth againſt the Coadjutor, Counſellor, Commander, &c. and Tenant of the land, though he be no diſſeiſor.

(a) 50.E.3.2. (a) The Demandant and others in a Præcipe did diſſeiſe the Tenant to the uſe of the others, and the Writ did not abate, for the Demandant was a Diſſeiſor, but gained no tenancy in the land, for that he was but a Coadjutor.

A man diſſeiſeth Tenant for life to the uſe of him in the reverſion, and after he in the reverſion agreeth to the diſſeiſin, it is ſaid, That he in the reverſion is a diſſeiſor in fee, for by the Diſſeiſin made by the ſtranger, the reverſion was diveſted, which (ſay they) cannot be

reveſted

revested by the agreement of him in the Reversion, for that it maketh him a Wrong doer, and therefore no relation of an estate by Wrong can helpe him.

¶ *Coadjutor.* Coadjutor est qui auxiliatur alteri, and is derived a coadjuvando. Anglicè, a fellow helper.

Sect. 279.

¶ Et nota q̄ disseisin est proprement lou un home entra en aſcun terres ou tenements lou ſon entre nest pas congeable, & ousta celuy que ad Franktenement, &c.

And note that disseisin is properly where a man entreth into any Lands or Tenements where his entry is not congeable, and ousteth him which hath the Freehold, &c.

¶ This description of a disseisin and the (&c.) in this place is understood onely of such Lands and Tenements whereinto an entry may be made, & not of rents, Commons, &c. whereof sufficient hath been said before in the Chapter of Rents, and so in effect Littleton described it before the edition of his book. And note here that every entry is no disseisin, unlesse there be an ouster also of the Freehold. And therefore Littleton doth not set downe an entrie onely but an ouster also, as an entry and a claimer, or taking of profits, &c.

3.E.4.2. 34.Ass.11.12. 26.Ass.17. 41.Ass.10. 24.E.3.31.Pl.Com.89. Parson de Hony Lane. 7.Ass.10. 11.Ass.25. 12.E.3.tit.Ass.88.45.Ass. 7. 9.Ass.19. 39.Ass.1. 18.E.2.Ass.374.

Now as there be Joyntenants by disseisin, so are there Joyntenants by Abatement, Intrusion, and Usurpation, all which are included in the latter &c.

Sect. 280.

¶ Et est aſcavoir que la nature de joyntenancie est, q̄ celuy que ſurvesquist avera ſolement lentier tenancie ſolonc̄ tiel estate que il ad, ſi le joynture ſoit continue, &c. Sicome ſi trois Joyntenants ſont en Fee ſimple, & lun ad iſſue & debie, uncore ceux que ſurvesquont aūont les tenements entier, & iſſue navera riens. Et ſi le 2. jointenant ad iſſue & debie, uncore le tierce que ſurvesquist avera les tenemēts entier, & eux avera a luy & a ſes

And it is to be understood, that the nature of joyntenancy is, that he which surviveth, shall have only the entire tenancy according to such estate as he hath, if the joynture be continued, &c. As if three Joyntenants be in fee Simple, and the one hath issue, and dieth, yet they which survive shall have the whole tenements, and the issue shall have nothing. And if the 2. joyntenant hath issue and dye, yet the third which surviveth shall have the whole tene-

¶ *Si le joynture ſoit continue, &c.*

Here by this (&c.) many poynts of learning are to bee observed, as that it is proper to joyntenants onely to have Lands by Survivor. for no Survivor of other Tenants pro indiviſo shall have the whole by Survivor, but only Joyntenants, and this is called in Law Jus accreſcendi. Omnes feoffati ſunt ſimul habendi & tenendi, nec totum nec partem ſeparatam nec per ſe, ſed ut quilibet eorum totum habeat cum aliis in communi, & cum unus moriatur non deſcendit aliqua pars hæredi morientis, nec ſeparata nec in communi ante mortem omnium, ſed pars illa communis per jus accreſcendi accreſcit ſuperſtitibus de perſona ad perſonam uſque ad ultimum ſuperſtitem. But although Survivorship bee proper to Joyntenants, yet it is not proper quarto modo (that is) omni, ſoli & ſemper, for there may bee

Bracton.lib.4.fol.262.b. Britton cap.35.Fleta l.3. c.2.4 & ca.10 49 E.3.f.5.6.

Joyntenants, though there be not equall benefit of Survivor on both sides. As if a man letteth lands to A. and B. during the life of A. if B. dyeth, A. shall have all by the Survivor, but if A. dyeth, B. shall have nothing.

Two or more may have a Trust or an Authority committed to them joyntly, and yet it shall not survive. But herein are divers diversities to be observed: First, there is a diversitie betweene a naked Trust or an Authoritie, and a Trust or authoritie joyned to an estate or interest. Secondly, there is a diversitie betweene authorities created by the partie for private causes, and Authoritie created by law, for execution of Justice. As for example, (b) If a man devise that his two Executors shall sel his land, if one of them dye, the survivor shall not sell it, but if he had devised his lands to his Executors to be sold, there the survivor shall sell it, which diversitie is implyed by our Author, for he saith, that he that surviveth shall have the entire tenancie.

(b) 39. Ass. p. 17. 30 H. 8. tit. devise B. Dyer 3. Eliz. 190. 49. E. 3. 16. 2. Eliz. Dyer 177. 23. Eliz. Dyer 371. 4. Eliz. Dyer 210. 10. H. 4. 2. & 3. 14. H. 4. 34. 29 H. 6. 42. 31. Ass. 22. 33 H. 8. joynt. Br. 62. 30. H. 8. condition Br. 190.

If a man make a letter of Atturney to two, to do any act, if one of them dye, the Survivor shall not do it: but if a Venire facias be awarded to foure Coroners to impannell, and return a Jury, and one of them dye, yet the other shall execute and returne the same.

If a charter of feoffement (c) be made, and a Letter of Atturney to foure or three joyntly & severally to deliver seisin, two of them cannot make liverie, because it is neither by them foure or three joyntly, nor any of them severally: but if the Sheriffe upon a Capias directed to him make a warrant to foure or three joyntly or severally to arrest the Defendant, two of them may arrest him, because it is for the execution of Justice (d) which is pro bono publico, & therefore shall be more favourably expounded, than when it is onely for private, and so hath it bin adjudged, Jura publica ex privato promiscuè decidi non debent.

(c) 38. H. 8. Dyer 62. 27. H. 8. fol. 6.

(d) Pasch. 45. Eliz. in the Kings Bench betweene King and Hobbes.

¶ *Et devie.* Note there is a naturall death and a civill death, and Littletons case is to be intended of both, and therefore (c) if two Joyntenants be, and one of them entreth into Religion, the Survivor shall have the whole.

(e) 21. R. 2. judgment 263.

Sect. 281.

¶ ET come le survivor tient lieu enter Joyntenants, en mesme le maner il tient lieu enter eux queux ont joynt estate ou possession ove auter de chattel real ou personal. Sicome si leas de terres ou tents soit fait a pluis ors pur terme des ans, celuy q̄ survesquist de les lessees avera les tenements a luy entier, durant l'terme, per force de mesme le leas. Et si un chival ou un auheires a touts jours, ses auterment est de Parceners. Car si trois parceners sont, & devant ascun partition fait, lun ad issue, & devie, ceo que a luy affiert discendra a son issu. Et si tiel parcener morust sans issue, donques ceo que a luy affiert discendra a ses coheires issint q̄ ils averont ceo per discent, & nemy per survivor, come joyntenants averont, &c.

AND as the survivour holds place betweene Joyntenants, in the same manner it holdeth place betweene them which have joynt Estate or Possession with another of a Chattell, reall or personall. As if a Lease of Lands or Tenements be made to many for terme of yeares, he which survives of the Lessees, shall have the Tenements to him only during the terme by force of ments to him and to his heires for ever: but otherwise it is of Parceners. For if three Parceners be, and before any partitiō made the one hath issue and dyeth, that which to him belongeth shall descend to his issue: & if such Parcener die without issue, that wch belongs to her shal descēd to her coheires, so as they shall have this by descent and not by survivor, as Joyntenants shall have, &c.

ter

tov chattel personal sont done a plusors, celuy que survesquist avera le chival solement.

the same lease. And if a Horse, or any other chattell personall be given to many, he which surviveth shall have the Horse onely.

THereby it is manifest that Survivor holdeth place regularly as well betweene Joyntenants of Goods and Chattels in possession or in right, as Joyntenants of Inheritance or Freehold.

¶ *Chattell*, Or Catell, whereof commeth the word used in law (f) Catalla, and is, as Littleton here teacheth, twofold, viz. reall and personall, and putteth examples of both. (f) Regist. Origin. 139. 244. Bract. lib. 2. 39. H. 6. 35. Stamford Pr. 45.

Sect. 282.

CEn meisme le manner est de dets & duties, &c. car si un obligation soit fait a plusors pur un debt, celuy q̄ survesquist avera tout le debt ou dutie. Et issint est dauters Covenants & Contracts, &c.

IN the same manner it is of debts and duties, &c. for if an Obligation be made to many for one debt, hee which surviveth shall have the whole debt or dutie. And so it is of other Covenāts & Contracts, &c.

CNOwhere speaketh of Debts, Duties Covenants, Contracts, &c.

¶ *Dets & Dutyes, &c.* Here by force of this (&c.) an exception is to bee made of two joynt Merchants, for the wares, Merchandizes, Debts, or Duties that they have as joyntmerchants or parceners shal not survive, but shall goe to the Executors of him that deceaseth, & this is per legem Mercatoriam, which (as hath beene said) is part of the lawes of this Realm, for the advancement and continuance of Commerce and Trade, which is pro bono publico, for the rule is, That Jus accrescendi inter Mercatores pro beneficio commercii locum non habet. F.N.B. 117. E. 38. E. 3. 7. v. 11. b.

And to the latter (&c.) in this Section the like exception must be made.

Sect. 283.

CItē aſcuns jointenants poient estre que poient aver joynt estate, et estre jointenants pur terme de lour vies, et uncore ils ont severall enheritances. Sicome terres soient dones a deux homes & a les heires de lour deux corps engendres, en ceſt case les donees ont joynt estates pur terme de lour deux vies, & uncore ils oūt

ALso there may be some joyntenants which may have a joynt estate, and be jointenants for terme of their lives, and yet have severall inheritances. As if lands be given to two men and to the heires of their two bodies begotten, In this case the donees have a joynt estate for terme of their two lives, and yet they have severall inheritances, for if one of

¶ *Ils ont joynt e. estate pur terme de lour deux vies, &c.* Note, albeit they have severall inheritances in taile, and a particular estate for their lives, yet the inheritance doth not execute and so breake the joyntenancy, but they are Joyntenants for life, and Tenants in common of the Inheritancee in tayle. Vide Sect. 296. 4 Ass. 326. pl. 11. pl. 170

¶ *Sicome home & feme poient aver, &c.* Here a diversity is implyed, when the estate of Inheritance is limited by one conveyāce, as Vide Westcotes case Lib. 5. fo. 60. 61. 3 Co. 470, 743

as in this case it is, there are no severall estates to growne one in another: But when the states are divided in severall conveyances their particular estates are distinct and divided, and consequently the one growes the other: As if a Lease bee made to two men for terme of their lives, and after the Lessor granteth the reversion to them two, and to the heires of their two bodies, the joynture is severed, and they are Tenants in common in possession. And it is further implyed that in this case of Littleton there is no division betweene the estate for lives, and the severall inheritances, for in this case they cannot convey away the inheritances after their decease, for it is divided only in supposition and consideration of law, and to some purposes the inheritance is said to be executed, as shall bee said hereafter. 184.

If a man make a lease for (f) life, and after granteth the reversion to the Tenant for life, and to a stranger and to their heirs, they are not joyntenants of the reversion, but the reversion is by act of law executed for the one moitie in the Tenant for life, and for the other moitie he holdeth it still for life the reversion of that moitie to the grantee.

(f) 39.H.6.2.b.

And so it is, if a man maketh a lease (g) to two for their lives, and after granteth the reversion to one of them in fee, the joynture is severed, and the reversion is executed for the one moitie, and for the other moitie there is Tenant for life the reversion to the Grantee.

(g) Westcotes case, ubi supra.

If Lessee for life granteth his estate to him in the reversion, and to a stranger, the joynture is severed, and the reversion executed for the one moitie by the act of law.

severall inheritances, car si lun des donees ad issue, & devy, lauter que survesquist avera tout p le survivor pur terme de sa vie, & si celuy que survesquist aury ad issue & devy, donques l'issue del un avera lun moitie, & lissue del auter avera lauter moitie d la terre, & ils tiendront la terre enter eux ẽ common, & ne sont pas joyntenãts, mes sont tenants en common. Et la cause pur q̃ tielx donees en tiel cas ont joynt estate pur terme de lour vies, est p̃ ceo que al commencement les ẽres fuerõt dones a eux deux, les queux parols sãs pluis dire font joynt estate a eux pur terme de lour vies. Car si home doit lesser tre a un auter p fait ou sans fait, nient feasant mention q̃l estate il averoit, & de ceo fait liverie de seisin, en ceo case le lessee ad estate pur terme de sa vie, & issint entant que les terres fueront dones a eux, ils ont joint estate pur terme de lour vies: & la cause pur q̃ ils averont several enheritances est ceo, entant que ils ne poiẽt aũ p nul possibi-

the donees hath issue and dye, the other which surviveth shall have the whole by the survivor for terme of his life, and if he which surviveth hath also issue, and die, then the issue of the one shall have the one moitie, & the issue of the other, shall have the other moity of the land, and they shall hold the land betweene them in Cõmon, and they are not joyntenants, but are tenants in common. And the cause why such Donees in such case have a joynt estate for terme of their lives, is, for that at the beginning the lands were givẽ to them two, which words without more saying make a joynt estate to them for terme of their lives. For if a man will let land to another by deed or without deed, not making mention what estate he shall have, and of this make liverie of seisin, in this case the lessee hath an estate for terme of his life, and so in as much as the lands were given to them they have a joynt estate for terme of their lives, & the reason why they shall have severall inhe-

lity

lity un heir enter eur engender, ſicome hõe & feñ poient aver, &c. donqz la ley voet que lour eſtate & lour enheritance ſoit tiel cõe reaſõ voet, ſolonqz la forme & effect des parols del done, & ceo eſt a les heires q̃ lun engendza de ſon corps p alcun de ſes femes, & a les heirs q̃ lauter engendza ď ſon corps p alc̃ de ſes femes, &c. Iſſint il coviēt p neceſſitie de reaſon que ils averont ſeverale inheritances. Et en tiel cas ſi iſſue dun des donees apres la mort des donees devie, iſſint q̃ il nad alcun iſſue en vie de ſon corps engẽdre, donqz le donor ou ſon heire poit enter en la moity come en ſon reverſion &c. coment q̃ lauť des donees ad iſſue en vie &c. Et la cauſe eſt que entãt que les enheritãces ſont ſeveral, &c. le reverſion de eux en ley eſt ſeveral, &c. & le ſurvivor del iſſue del auter ne tiendra pas lieu daver lentierť.

ritances is this, in aſmuch as they cãnot by any poſſibility have an heir between them ingendred, as a man and woman may have, &c. the law will that their eſtate & inheritance be ſuch as is reaſonable, according to the forme and effect of the words of the gift, and this is to the heires which the one ſhall beget of his body by any of his wives, and to the heirs which the other ſhall beget of his body by any of his wives, &c. So as it behoveth by neceſſitie of reaſon that they have ſeveral inheritances. And in this caſe if the iſſue of one of the donees after the death of the donees die ſo that he hath no iſſue alive of his body begotten, then the donor or his heire may enter into the moity as in his reverſiõ, &c. although the other donee hath iſſue alive, &c. and the reaſon is, foraſmuch as the inheritances be ſeveral, &c. the reverſion of them in law is ſeverall, &c. and the ſurvivor of the iſſue of the other ſhall hold no place to have the whole.

If a man maketh a Leaſe for life, and granteth the reverſion to two in fee, the Leſſee granteth his eſtate to one of them, they are not joyntenants of the reverſion, for there is an execution of the eſtate for the one moitie, and an eſtate for life, the reverſion to the other of the other moity.

Here Littleton **hath well reſolved a doubt, for of ancient time it hath beene ſaid,** (h) **That when lands have beene given to two women, and to the heires of their two bodies begotten (which caſe our Author putteth in the next Section) that the husband having iſſue ſhould bee Tenant by the Curteſie living the other after, for that as ſome held the inheritance was executed, and that the after were Tenants in Common in poſſeſſion, and conſequently** v. 8. **the husband to bee Tenant by the Curteſie, which hee could not bee if the women had a joynt eſtate for terme of their lives: and likewiſe it was ſaid** (i) **that the iſſue of the one ſhould recover the moity in a Formedon living the other after. But,** Verba ſunt hæc, **and Littleton grounding himſelfe upon good Authority in Law hath cleered this doubt.**

(h) 17. E. 3. 51. 78. 18. E. 3. 39. 50. E. 3. Statham. tit. done. 50. E. 3. Feoffements & faits 97.

Fy. 326.a

(i) 44. E. 3. taile 13. 8. Aſſ. 33. 24. E. 3. 19. 7. H. 4. 16. Corbets caſe. lib. 1. fo. 8. 84. 6. 4 Mariæ Dyer 145. See before in the chapter of Ten. by the curteſie Sectione.

¶ *Nient feaſant mention quel eſtate il averoit.* **Here** Littleton **addeth materially (not making mẽtion of what eſtate) for** (k) **if in the premiſſes lands bee letten, or a rent granted, the generall intendment is, that an eſtate for life paſſeth, but if the** Habendum **limit the ſame for yeares or at will, the** Habendum **doth qualifie the generall intendment of the premiſſes: And the reaſon of this is, for that it is a maxime in Law, That every mans grant ſhall be taken by conſtruction of Law moſt forcible againſt himſelfe.** Quælibet conceſsio fortiſsime contra donatorem interpretanda eſt, **which is ſo to bee underſtood that no wrong bee thereby done, for it is another maxime in law,** Quod legis conſtructio non facit injuriam: **And therefore if Tenant for life maketh a leaſe generally, this ſhall be taken by conſtruction of Law,**

(k) Pl. Com. in Throgmortons caſe. PK. 167 10. K. 107 Regula. Max. Max:

Law, an estate for his owne life that made the lease, for if it should be a lease for the life of the Lessee, it should be a wrong to him in the reversion. And so it is if Tenant in tatle make a lease generally, the Law shall contrive this to be such a Lease as he may lawfully make, and that is for terme of his owne life; for if it should be for the life of the Lessee, it should be a discontinuance, and consequently the state which should passe by construction of law should worke a wrong.

¶ *Et issint entant que les terres fueront dones a eux ils ount joynt estate pur lour vies.* This is plaine, but with this exception, Unlesse the Habendum doth otherwise limit the same. And therefore if a lease be made (l) to two, Habendum to the one for life, the remainder to the other for life, this doth alter the generall intendment of the premisses, & so hath it beene oftentimes resolved. And so it is if a Lease be made to two, habendum the one moity to the one, & the other moity to the other, the habendum doth make them tenants in common, and so one part of the Deed doth explane the other, and no repugnancy betweene them, Et semper expressum facit cessare tacitum.

Pro. 880, 3 Co. 25, Dy 160 b
PK 174, 2 Ro. 65. Ho. 172.
2 R. 55
9. 190 b
5. R. 76

(l) 8.E.3.427. tit. Feoffem. & Faits 73. 30.H.8. tit Joynt. Br. 53. Dyer fo. 361. Pl. Com. 160. 8. R. 154

Bracton.

¶ *Per nul possibilitie.* Here it is to be observed, That where the grant is impossible to take effect according to the letter, there the Law shall make such a construction as the gift by possibility may take effect, which is worthy of observation. Benignæ faciendæ sunt interpretationes cartarum propter simplicitatem Laicorum, ut res magis valeat quam pereat.

¶ *Issint il covient per necessitie de reason.* The reason of the Law is the life of the Law, for though a man can tell the law, yet if he know not the reason thereof, he shall soon forget his superficiall knowledge: but when he findeth the right reason of the law, and so bringeth it to his naturall reason, that he comprehendeth it as his own, this will not onely serve him for the understanding of that particular case, but of many other. For Cognitio legis est copulata & complicata: And this knowledge will long remaine with him: all which is plainely implyed by the words, and (&c.) of our Author in this Section.

¶ *Et en tiel case si lissue dun des Donees apres la mort des Donees devie issint que il nad ascun issue en vie de son corps engendres, donques le Donor ou son heire poet enter en le moitie.* This is mistaken in the imprinting, and varieth from the originall, which is, Si lun Donee ou lissue dun des donees apres la mort des Donees devie, issint que il nad ascun issue, &c. For it is evident, that if the one Donee himselfe dieth without issue the Inheritance doth revert for a moitie, and after the decease of the other donee, the Donor may enter into that moitie, and whether the issue of the one Donee dieth without issue at anytime, either in the life of the other Donee, or after his decease, it is not materiall, for whensoever no issue is remaining of the one Donee, so as the state tatle is spent, the Donor may after the decease of the surviving Donee, enter into that moity.

Aristot. 1. Metaphys.

¶ *Et la cause est, que entant que les inheritances, &c.* Littleton in this chapter hath often said, Et la cause est, which is worthy of observation, for then wee are truly said to know any thing, when we know the true cause thereof: Tunc unumquodque scire dicimur, cum primam causam scire putamus: Scire autem proprie est rem ratione & per causam cognoscere.

Virg. 1. Georg.

Fœlix qui potuit rerum cognoscere causas.

And therefore all Students of Law are to apply their principall indeavour to attain thereunto, all which is implyed by the words, and severall &c in this Section.

Here the cause of the entrie of the Donor into a moitie in this case is, That in as much as the Inheritance is severall, the reversion is severall. Therefore upon the severall determination of the estate in tatle, the Donor may enter, and the law termeth a reversion to bee expectant upon the particular estate, because the Donor or Lessor or their heirs after every determination of any particular estate, doth expect or looke for to enjoy the lands or Tenements againe.

Dyer 14. El. 309. By. 145

¶ *Le reversion de eux en ley est severall. &c.* Hereby, and by this (&c.) is implyed, That upon one joynt or entire gift or lease there is one joynt or entire reversion, & upon severall gifts or leases there be severall reversions. And this is to be understood of the reversion in the Donor or his heires But albeit the gifts or leases be severall, yet if the Donors or lessors grant the reversion to two or more persons and their heires; they are joyntenants of the reversion And so it is of a Remainder: and therefore if a gift be made to two men and the heires of their two bodies begotten, the remainder to them two and their heirs, they are joyntenants for life, tenants in Common of the state tatle, and Joyntenants of the fee

3. R. 5

fee ſimple in remainder, for they are Joynt purchaſers of the Fee ſimple, and the remainder in fee is a new created eſtate, but the reverſion remaining in the Donor, or his heires, is a part of his ancient Fee ſimple.

Sect. 284.

CEt ſicome eſt dit de males, en meſme le manner eſt lou terre eſt done a deux females, & a les hẽrs ď lour deux corps engendres.

And as it is ſaid of males, in the ſame manner it is where land is given to two females, and to the heirs of their two bodies engendred.

CIf a man giveth lands to two men and one woman, and the heires of their three bodies begotten, In this caſe they have ſeverall Inheritances, for albeit it may be ſaid, that the woman may by poſſibility marry both the men one after another, yet firſt ſhe cannot marrie them both in præſenti, and the Law will never intend a poſſibilitie upon a poſſibility, as firſt to marry the one, & then to marry the other. Secondly, the forme of the gift is, To the heires of their three bodies; which is not poſſible, & therefore they ſhall have ſeveral Inheritances. And ſo it is, if a gift be made to one man & to two women, mutatis mutandis. In the ſame manner, if a gift in taile be made to a man and his mother, (m) or to a man and his ſiſter, or to him and his Aunt, &c. in this and like caſes, albeit the gift is made to a man & a woman, yet they have ſeverall inheritances, becauſe they cannot marry together, and are within the rule and reaſon of our Author. 44.E.3.tit.Taile 13.

(m) 18 E.3.39.7.H.4.16.

Sect. 285.

CItem ſi terres ſoyent dones a deux & a les heires ď lun de eux, ceo eſt bone Jointure & lun ad franktenemẽt, & lauter ad fee ſimple: Et ſi celuy que ad le fee devie, celuy que ad le franktenement, avera lentiertie per le ſurviv̄or pur terme ď ſa vie. En meſme le manner eſt, lou tenements ſont dones a deux & les heires del corps dun de eux engendrs, lun ad franktenement, & lauter ad fee taile, &c.

Alſo if lands be given to two and to the heires of one of them, this is a good Joynture, and the one hath a Freehold, and the other a fee ſimple: And if he which hath the fee dieth, he which hath the freehold ſhall have the entierty by ſurvivor for terme of his life. In the ſame manner it is, where tenements be given to two & the heirs of the body of one of them engendred, the one hath a freehold, & the other a fee taile, &c.

CBy this Section, and the (&c) in the end of it, they are Joyntenants for life, and the Fee-ſimple or eſtate taile is in one of them, and becauſe it is by one and the ſame condeyance, they are Joyntenants, and the fee ſimple is not executed to all purpoſes, as hath beene ſaid before. Fol. 2

If a fine bee levied to two, (n) and to the heires of one of them, by force whereof hee is ſeiſed, he that hath fee dieth, and after the Joyntenant for life dieth, and an eſtranger abates, in this caſe the heire may either ſuppoſe the fee ſimple executed, & have an aſſiſe of Mortdaunceſter, the words of which writ be, Si R. pater ſuus fuit ſeiſitus die quo obiit in dominico ſuo ut de feodo, which cannot bee ſaid of him that hath but a remainder expectant upon an eſtate for life, but in reſpect that he is ſeiſed of a fee ſimple, and of a joynt eſtate in poſſeſſion, the words in the writ be true, That he was ſeiſed in Dominico ſuo ut de feodo. Likewiſe the heire may have a writ of right, which alſo in ſome ſort proves the fee ſimple executed, or the heir may have a Scire facias to execute the fine, by which the heir ſuppoſeth that

(n) 42.E.3.9.10. 11.H.4. 55. 31.E.3.Scire facias 19. 29.H.8.Mortd.b.59. 4.E.3.37. F.N.B.196.& 219. 4.E.3.Itinere Derby. 24.E.3.70.

9.9.a

that the fee was not executed, or he may maintaine a writ of intrusion where the heire maketh the like supposition, and shall terme it a remainder. And yet when land is given to two and to the heires of one of them, he in the remainder cannot grant away his fee simple, as hath beene said.

Sect. 286.

¶ *Laimer riens per discent de son compagnion, &c.* By which (&c.) is implyed, That so it is if one Joyntenant acknowledge a Recognisance or a statute, or suffreth a judgment in an action of debt, &c. & dieth before execution had, it shall not bee executed afterwards. But if execution be sued in the life of the Conusor, it shall binde the survivor: and it is further implyed, That both in the case of the Charge and of the Recognisance, statute, and Judgement, if he that chargeth, &c. survive, it is good for ever.

F.N.B.204.E.207. 7.H.6.2. 13.H.7.22. 10.E.3.34. 17.R.2.tit. Charge.15. 5.H.5.8. Vide Sect.289.

And so it is (o) if a man bee possessed of certaine lands for term of yeares in the right of his wife, and granteth a Rent charge, and dyeth, the wife shall avoyd the charge, but if the husband had survived, the charge is good during the terme.

(o)9.H.6.52.

If a Villeine purchase lands, and binde himselfe in a Recognisance, if the Lord enter before execution, the Lord shall avoyd the same, as it hath beene said.

(p)8.E.3.tit.Execution Statham.

But otherwise it is if he had made a Lease for yeares, for the reason that Littleton here yeeldeth in this Section.

If two Joyntenants bee of a terme, (q) and the one of them grant to I.S. that

(q)14.H.8.12.Pl.Com. 263.b.in Dame Hales Case.

¶ Item ſi deux joyntenants ſont ſeiſies deſtate en fee ſimple, & lun graunt un rent charge per ſon fait a un auter hors de ceo, que a luy affiert, en ceſt caſe durant la vie le Grantor, le rent charge eſt effectuall: Mes apres ſon deceſſe le grant de le rent charge eſt void, quant a charger la tre, car celuy que ad la terre per le ſurvivor tiendra tout la terre diſcharge. Et la cauſe eſt, pur ceo que celuy que ſurveſquiſt clayma & ad la tre per le ſurvivor, & nemy ad, ne poet de ceo claymer rien per diſcent de ſon compagnion, &c. Mes autrement eſt de Parceners, car ſi ſoient deux Parceners des tenemẽts en fee ſimple, et devant aſcun partition fait, lun charge ceo que a luy affiert per ſon Fait, dun rent charge, &c. et puis morust ſans iſſue, per que ceo, que a luy affiert diſcẽd a lauter Parcener, en ceſt caſe lauter parcener tiendra la terre charge, &c. pur ceo que il vient a cel moitie per diſcent, come heire, &c.

Also if two Joyntenants be seised of an estate in Fee simple, and the one grants a Rent-charge by his Deed to another out of that which belongeth to him: in this case during the life of the Grantor, the Rent charge is effectuall, but after his decease the grant of the Rent charge is void, as to charge the land, for he which hath the land by survivor, shal hold the whole land discharged. And the cause is, for that he which surviveth claimeth and hath the land by the survivor, and hath not, nor can claime any thing by descent from his cõpanion, &c. But otherwise it is of Parceners, for if there be two Parceners of Tenements in fee simple, & before any partitiõ made the one chargeth that which to her belongeth by her deed, with a Rent charge, &c. & after dieth without issue, by which that which belongeth to her descends to the other parcener, in this case the other parcener shal hold the land charged, &c. because she came to this moity by descẽt, as heir, &c.

if

if he pay to him ten pound before Michaelmasse, that then he shall have his terme, the Grantor dyeth before the day, I.S. payes the samme to his Executors at the day, yet hee shall not have the terme, but the Survivor shall hold place, for it was but in nature of a communication, but if he had made a Lease for years to begin at Michaelmasse, it should have bound the Survivor. v. f. 289

And where Littleton putteth the case of a rent charge, It is so likewise implyed, that if one Joyntenant granteth a Common of Pasture, or of Turbary, or of Estovers, or a Corody, or such like out of his part, or a way over the Land, this shall not binde the Survivor: for it is a maxime in Law, that Jus accrescendi præfertur oneribus, and there is another maxime, that Alienatio rei præfertur juri accrescendi. 45.E.3.13. Vide Sect. 289. Max: Max:

If one Joyntenant in Fee simple be indebted to the King, and dyeth, (r) after his decease no extent shall be made upon the Land in the hands of the Survivor. (r) 40.Ass.36. 50.Ass.5. F.N.B.149.q.Pl. Com.321.

If a recovery be had against one Joyntenant, who dyeth before execution, the Survivour shall not avoid this recovery, because that the right of the moitie is bound by it.

If one Joyntenant in fee take a Lease for yeares of an estranger by Deed indented and dyeth, the Survivor shall not be bound by the Conclusion, because he claymes above it, and not under it.

¶ *Et la cause est pur ceo que celuy que survesquist claime & ad la terre per survivor, &c.* Here againe Littleton sheweth the reason: and the cause wherefore the Survivor shall not hold the Land charged, is, for that he claymeth the Land from the first feoffor, and not by his companion, which is Littletons meaning when he saith, (that he claymeth by survivor) For (f) the surviving Feoffee may plead a feoffment to himselfe without any mention of his joynt feoffee. And this is the reason, That if two Joyntenants be in fee, and the one maketh a Lease for yeares, reserving a Rent, and dyeth, the surviving feoffee (t) shall have the Reversion by Survivor, but he shall not have the Rent because he claymeth in from the first feoffor, which is paramount the rent. If there be two Jointenants in Fee, and the one Joyntenant granteth a rent charge out of his part, and after releaseth to his joynt companion and dyeth, he shall hold the land charged, for that he is out of the reason and cause set downe by Littleton, because he claymeth not by survivor, in as much as the release preventeth the same. And of this opinion was Littleton himselfe (u) before the Edition of his Book. But all men agree, that if A.B. & C. be Joyntenants in fee, and A. chargeth his part, & then releaseth to B. and his heirs, and dyeth that the (w) charge is good for ever, because in that case B. cannot be in from the first Feoffor, because he hath a joynt companion at the time of the release made, and severall writs of Præcipe must be brought against them. And albeit the release of one joyntenant to the residue of the joyntenants makes no degree in supposition of Law, neither is there any severall estate betweene them, but the estate of him that releaseth is as it were extinguished and drowned in their estate and possession, so as one Præcipe lyeth against them, yet shall they hold the Land charged, as is aforesaid. As if tenant for life grant a Rent charge, and after surrendreth his estate to the Lessor, albeit the estate charged be drowned, and the Lessor is not in by him, yet he shall hold it charged.

(f) 14.E.4.1.b. 18.E.2. briefe 830. 8.E.2.entry 77. 18.E.3.28. 38.E.3.26. 8.H.6.25. Vide 46.E.3. 77. 35.H.6.39.
(t) Dier Mich.2.& 3.Eliz. 187.Lib.1.fol.96. Vide Lib.6.fol.78.79.
(u) 33.H.6.5.2. 9.Eliz.Dyer 263.
(w) 37.H.8.tit.alienation Br.31. 10.E.4.3.b. 40.E.3.41.b. 33.H.6.5. 22.H.6.42.b. per Pole 35.E.3.release 43. 33.E.3.avowry 195. 14.H.8.2.

¶ *Mes auterment est de Parceners, Car si sont deux Parceners, &c.* This is to be intended as well of Parceners by custome, as of Parceners by the common Law, & here is implyed the reason of the diversity, for that the survivor doth claime above the charge, and the heire by descent under the charge.

Sect. 287.

¶ Item si sõt deux jointenants des terres en Fee simple deins un burgh, lou les terres & tenemẽts sont devisables per testament, & si lun de les dits deux joyntenants devise ceo que a luy affiert per son

ALso if there bee two Joyntenants of Land in Fee simple within a Borough, where Lands and Tenements are devisable by testament, and if the one of the said two Joyntenants deviseth that which to him be-

¶ *Per son testament &c.* Either in writing, or nuncupative, according to the custome.

¶ *Et la cause est pur ceo que nul devise, poet prender effect mes apres le mort le devisor & per sa mort tout la terre maintenant devient per la ley a son compagnion, &c.*

testament, &c. & moruſt, ceo deviſe eſt voide. Et la cauſe eſt pur ceo que nul deviſe poit prender effect, mes apres la mort le deviſor, & per la mort tout la terre maintenant devient per la ley a ſon companion que ſurvelquiſt per le ſurvivor, le quel il ne claime, ne ad riens en la terre per my le deviſor, mes en ſon droit demeſne p le ſurvivor, ſolonque le courſe de ley, &c. & pur cel cauſe tiel deviſe eſt voide. Mes auterment eſt de Parceners ſeiſies des tenements deviſables en tiel caſe de deviſe, &c. Cauſa qua ſupra.

longeth by his Teſtament, &c. and dyeth, this deviſe is voyd. And the cauſe is for that no deviſe can take effect till after the death of the deviſor: & by his death all the Land preſently commeth by the Law to his companion which ſurviveth by the Survivour, the which he doth not claime, nor hath any thing in the land by the deviſor, but in his owne right by the ſurvivor according to the courſe of Law, &c. and for this cauſe ſuch deviſe is void. But otherwiſe it is of Parceners ſeiſed of tenements deviſable in like caſe of deviſe, &c. *Cauſa qua ſupra.*

Pl.Com.in Pulnerſtons caſe.

&c. here both their claimes commence at one inſtant, and although an Inſtant Eſt unum indiviſibile tempore quod non eſt tempus nec pars temporis, ad quod tamen partes temporis connectuntur, and that, Inſtans eſt finis unius temporis, & Principium alterius: yet in conſideration of law there is a priorite of time in an inſtant, as here the Survivor is preferred before the deviſe, for Littleton ſaith, that the cauſe is that no deviſe can take effect till after the death of the deviſor, and by his death all the land preſently commeth by the Law to his companion. Whereby it appeareth, that Littleton by theſe words, Poſt mortem, & per mortem, though they jump at one inſtant, yet alloweth priority of time in the inſtant which he diſtinguiſheth by per & poſt And the reaſon of this priorite is, that the Survivour claymeth by the firſt Feoffor (as hath bin ſaid) and therefore in judgement of Law his Title is Paramount, the title of the Deviſee, and conſequently the deviſe void, and the rule of Law is, that, Jus accreſcendi præfertur ultimæ voluntati.

Reg: Page 182.

Two Feme, Joyntenants of a Leaſe for yeares, one of them taketh husband and dyeth, yet the terme ſhall ſurvive, for though all Chattels reals are given to the husband, if he ſurvive, yet the ſurvivor between the Joyntenants is the elder title, and after the marriage the feme continued ſole poſſeſſed, for if the husband dyeth, the feme ſhall have it, and not the Executors of the husband, but otherwiſe it is of perſonall goods.

If a man be ſeiſed of a houſe, and poſſeſſed of divers heirlomes, that by cuſtome have gone with the houſe from heire to heire, and by his will deviſeth away the heirelomes, this deviſe is void, for as Littleton here ſaith, the will taketh effect after his death, and by his death, the heirlomes by ancient cuſtome are veſted in the heir, and the law preferreth the cuſtom before the Deviſe. And ſo it is if the Lord ought to have a Herriot when his tenant dieth, & the tenãt deviſeth away all his goods, yet the Lord ſhal have his Herriot for the reaſon aforeſaid. And it hath beene anciently ſaid, that the Herriot ſhall be paid before the Mortuary. (x) Imprimis autem debet quilibet qui teſtaverit, dominum ſuum de meliore re quam habuerit recognoſcere, & poſtea Eccleſiam de alia meliore, &c. wherein the Lord is preferred, for that the tenure is of him. This dutie to the Lord is very ancient, for in the lawes before the conqueſt it is ſaid, Sive quis incuria, ſive morte repentina fuerit intectat' mortuus, dominus tamen nullam rerum ſuarum partem (præter eam quæ jure debetur Heriotti nomine) ſibi aſſumito.

1.H.5.executors 108.

(x) Fleta Lib.2.cap.56. Bracton lib.2.fol.60. Britton fol.178.

Lamb.fol.119.58.

In the Saxon tongue it is called Heregeat, as much to ſay (as I take it) as the Lords beſt, for Here is Lord, and geat is beſt. But let us returne to Littleton.

¶ *Mes auterment eſt de parceners ſeiſies des tenements deviſable en tiel caſe del deviſe, &c.* Cauſa qua ſupra.

The reaſon is evident, for that there is no ſurvivor betweene Copartceners, but the part of the one is deſcendible, and conſequently may be deviſed.

Sect.

Section 288.

¶ Item il ẽ comẽ-mẽt dit, q̃ chescũ joyntenant est seisie ó la terr̃ q̃ il tiẽt joyntment, per my & per tout, et ceo est au-tant adire, q̃ il est sei-sie per chescum parcel, & per tout, &c. & ceo est voier, car en chescum parcel, & per chescum parcel, & per touts les terres et tene-ments il est joynt-ment seisie ovesqz son companion.

ALso it is commonly said, that every joyntenant is seised of the Land which hee holdeth joyntly *Per my & per tout*, and this is as much to say, as he is seised by every parcell and by the whole, &c. and this is true, for in every parcell, and by every parcell, and by all the lands and tenements he is joyntly seised with his companion.

¶ *Item est commune-ment dit, &c.* That is, It is the common opinion, and Communis opinio is of good authoritie in Law, A communi observantia non est recedendum, which appeareth here by Littleton. Vide Sect. 297.

¶ *Per my & per tout.* Et sic totum tenet & nihil tenet, s. totum conjunctim, & nihil per se separatim. And albeit they are so seised (as for example where there bee two joyntenants in fee) yet to divers purposes each of them hath but a right to a moitie, as to enfeoffe, give, or demise, or to forfeit or lose by default in a Præcipe. If my villein (y) and another purchase lands to Vide Bracton lib. 5. 430. Britton cap. 35. Fleta lib. 3. cap. 4. 40. E. 3. 40. 18. E 2. Bre. 831. 35. H. 6. 39. Vide the second part of the Institutes upon the 6. Chapter of the Statute De Bigamis. Fleta lib. 1. cap. 28. 40. Ass. 79. 48. E. 3. 16.

(y) Vid. 6. E. 3. 4. 7. E. 4. 29. 11. El. Dyer 283.

them two and their heires, I may enter into a moity.

And where all the joyntenants joyne in a feoffement, every of them in judgement of law do give but his part. If an Alien and a subject purchase lands joyntly, the King upon office found shall have but a moity. And Littleton afterwards in this chapter saith, that one joyntenant hath one moity in Law, and the other the other moity. And therefore if two joyntenants be (z) and both they make a feoffment in fee upon condition, and that for breach thereof one of them shall enter into the whole, yet he shall enter but into a moity, because no more in judgment of Law passed from him: and so it is of a gift in taile or a lease for life, &c. s. 291.

(z) Pl. Com. in Brownings case. fol.

Yet every joyntenant may warrant the whole, (a) because a man may warrant more than passeth from him.

If two Joyntenants make a feoffment in fee (b) and one of the Feoffors dye, the Feoffee cannot plead a feoffment from the survivor of the whole, because each of them gave but his part, but otherwise it is on the part of the Feoffees, as hath beene said before.

(a) Vide the second part of the Institutes upon the 6. chapter of the Statute de Bigamis.

(b) 14. E. 4. 5. and the other Bookes abovesaid.

And where two joyntenants be, the one of them (c) may make the other his Baylife of his moity, and have an Action of account against him. And one joyntenant (d) may let his part for yeares or at will to his companion.

(c) 21. E. 3. 60.

(d) 11. H. 3. 60. 33.

If two joyntenants be of certaine lands, and the one of them by Deed indented (e) bargaineth and selleth the lands, and the other joyntenant dyeth, and then the deed is inrolled, there shall passe nothing but the moity which the bargainer had at the time of the bargaine.

(e) 6. E. 6 tit. Faits inroll 9. Br.

Sect. 289.

¶ Item si deux join-tenants sont sei-sies ó certain ter-res en fee simple, & lun lessa ceo que a luy affi-ert a un estranger pur terme de 40. ans, & de-by devant le term com-

ALso if two jointenants be seised of certain lãds in fee simple, and the one letteth that to him belongeth to a stranger for terme of forty yeares, and dyeth before the

¶ *Per force de mesm' le dit lease, &c.*

By this (&c.) is implyed, That where our Author speaketh of Joyntenants seised in fee, that so it is if two bee seised for life and one make a Lease to begin presently, or in

(f) Vid. Sect. 286. & 660. & Sect. 2.

in futuro, and dieth, this Leafe ſhall binde the ſurvivor, as it hath been adjudged. (g) And if one jointenant grant veſturam terræ, or herbagium terræ, for yeares and dieth, this ſhall binde the ſurvivor, for ſuch a Leſſee hath right in the land. So it is if two Joyntenants be of a water, and the one granteth the ſeverall Piſchary.

(g) 11.H.4.90. 14.H.8.6. 17.E.4.6.a. 9.H.6.52. 21.H.7.29. 14.H.7.4. 18.E.3.Execution 56. 11.El.Dy.285.P.Com.160. a. Temps E.1.Aſs.422. 20.H.6.4. 7.H.7.13. 10.H.7.24.

¶ *Lun leſſa.*

The one letteth. If two Joyntenants be of an advowſon, and (h) the one preſenteth to the Church, & his Clerke is admitted & inſtituted, this in reſpect of the privity ſhal not put the other out of poſſeſſiõ, but if that joyntenant that preſẽteth dieth, it ſhal ſerve for a title in a quar' impedit brought by the ſurvivor. But yet if one joyntenant or tenant in Cõmon preſent, or if they preſẽt ſeverally, the Ordinary may either admit or refuſe to admit ſuch a Preſentee, unleſſe they joyn in preſentation, & after the ſixe moneths hee may in that caſe preſent by Lapſe.

(h) 6.E.3.38.39.52. 7.E.3.20.21.17.E.3.37.b. 22.E.3.9. 30.E.3.16. 11.H.4.54. 15.E.3.Dar. preſentment 11. 10.E.4. 94. 1.H.7.1.b. 2.R.3. Quar.Imp.102. 9.El.Dy. 259. 36.H.8.Br.Preſent. 27.H.8 fo.11. 5.H.7.8. 6.E.4.10.b. Doct.& Stud. 116. 34.H.6.40. 20.E.3. Quar.Imp.63.F.N.B. 34.V.

But if two or more Coparceners bee, (i) & they cannot agree to preſent, the eldeſt ſhall preſent, & if her ſiſter doth diſturbe her, ſhe ſhall have a quare impedit againſt her, and ſo ſhall the iſſue & the Aſſignee of the eldeſt, and yet he is tenant in common with the youngeſt. And in the ſame manner the tenant by the Curteſie of the eldeſt ſhall preſent; but if there be foure Coparceners, and the eldeſt and the ſecond preſent, and the other two preſent joyntly or ſeverally, the Ordinary may refuſe them all, for the eldeſt did not preſent alone, but ſhe and one other of her ſiſters. But now let us returne to Littleton.

(i) Brad.l.4.fo.238.245. 247.Brit.fo.223. 45.Ed. 3.Fines 41. 18.E.2.Quar. Imp.174. 38.H.6.9. 19.E.3.ib.59. 5.H.5.10. F.N.B.34.V.

mence, ou deins le ẽme, en ceſt caſe apres ſon deceaſe le Leſſee poet enter & occupier la moitie a luy leſſe durant le term, &c. coment que le Leſſee navoit unqs poſſeſſion de ceo en la vie le Leſſor, per force de meſme l'leaſe, &c. Et le diverſitie perenter le caſe de grant de Rentcharge avantdit, & ceſt caſe eſt ceo, car ẽ grant de Rent charge p joyntenaunt, &c. les Tenemẽts demurgẽt touts foits come ils fueront adevant, ſans ceo que aſcun ad aſcun droit daver aſcun parcell de les tenements forſque eux meſmes, & les Tenements ſont en tiel plyte, come ils fueront devant le charge, &c. Mes ou Leaſe eſt fait per un Joyntenant a un auter pur term des ans, &c. maintenant per force de le Leaſe le leſſee ad droit en meſm la terre, ceſtaſcavoir, de tout ceo que a ſon leſſour affiert & daver ceo per force de meſme le Leaſe durant ſon terme. Et ceo eſt la diverſitie.

term beginneth, or within the terme, in this caſe after his deceaſe the Leſſee may enter & occupie the moitie let unto him during the terme, &c. although the leſſee had never the poſſeſſion thereof in the life of the Leſſor, by force of the ſame leaſe, &c. And the diverſitie betweene the caſe of a grant of a rent charge aforeſaid, and this caſe is this, for in the grant of a Rent charge by a Joyntenant, &c. the tenements remaine alwayes as they were before, without this that any hath any right to have any parcel of the tenements but they themſelves, and the Tenements are in the ſame plight as they were before the charge, &c. But where a leaſe is made by a Joyntenant to another for terme of yeares, &c. preſently by force of the Leaſe, the Leſſee hath right in the ſame Land, (*videlicet*) of all that which to the Leſſor belongeth, and to have this by force of the ſame Leaſe, during his terme. And this is the diverſitie.

Sect. 290.

¶ Item tẽ joyntenãts (sils voilent) poient faire partition enter eux, & la partition est assets bon, mes de ceo faire ils ne serront compels per la ley. Mes sils voylent fait partition de lour proper volunt & agreement, le partition estoiera en sa force.

ALso Joyntenants (if they will) may make partition betweene them, and the partition is good enough, but they shall not be compelled to doe this by the Law, but if they will make partition of their own will and agreement, the partition shal stand in force.

¶ *Poient faire partition.* But this partition must bee (k) by Deed, as hath beene said before. But joyntenants for yeares may (l) make partition without Deed.

(k) Vid. Sect. 259. 318.

(l) 18. El. Dyer 350.

¶ *Ils ne serra compel.* This is true regularly, but by the custome of some Cities and Boroughs one Joyntenant or tenant in Common may compell his companion by writ of partition grounded upon the customs to make partition. But since Littleton wrote Joyntenants and Tenants in common generally are compellable to make partition by writ framed upon the Statutes (m) of 31. & 32 H 8. as before hath beene said. And albeit they be now compellable to make partition, yet seeing they are compellable by writ, they must pursue the Statutes, and cannot make partition by Parol, for that remaines at the common Law. And by Littletons Authoritie herein it seemeth to me that if one Joyntenant or Tenant in Common disseise another, & the Disseisee bring his assise for the moity, that in this case though the Playntife prayeth it, yet no judgement shall be given to hold in severaltie, for then at the common Law there might not have beene by compulsion of Law a partition betweene joyntenants and tenants in Common, and by rule of Law the Plaintife must have judgement according to his pleint or demand.

F.N.B. 62. b.

(m) 31. H. 8. ca. 1. 32. H. 8. ca. 32. Vide Sect. 264. 247. 259. Mich. 16. & 17. El. 1. 340. Inter Harris & Eden adjudgeace. 18. El. Dyer 350. b. Vide before in the chapter of Partition, many bookes cited concerning this matter. 3. E. 3. 48. F. N. B. 9. b. 7. Ass. 10. 7. E. 3. 29. 10. Ass. 17. 10. E. 3. 40. 43. 12. Ass. 15. 17. 12. E. 3. judgement 162. 26. E. 3. Ass 62. 28. Ass. 35. 23. Ass. 10. 7. H. 6. 6. 4. 19. H. 6. 45. 3. E. 4. 10. Vid. Sect. 247. Brit. fo. 112. Lib. 6. fo. 12. & 13. Morrices case.

If two Joyntenants be (n) of land with Warranty, and they make partition by writing, the warranty is destroyed, but if they make partition by writ of partition upon the Statute, the warranty remaines because they are compellable thereunto.

(n) 29. E. 3. tit Garr.

Sect. 291.

¶ Item si un joynt estate soit fait de tre a le baron & a sa feme & a un tierce person, en ceo cas le baron & sa feme nont en ley en lour droit forsq; le moitie, &c. & le tierce person a veta tant come le baron & sa feme ont, g. lauter moitie, &c. Et la cause est, pur ceo que le baron & sa feme ne sont forsque un person en

ALso if a joynt estate be made of Land to Husband and Wife, and to a third person, in this case the husbãd & wife have in law in their right but the moity, and the third person shall have as much as the husband and wife, *viz.* the other moity, &c. And the cause is, for that the husband and wife are but one person in

¶ *Le baron & sa feme nont en ley en lour droit forsque le moitie, &c.* William Ocle and Joane his wife (o) purchased lands to them two and their heires, after William Ocle was attainted of high treason for the murther of the Kings father, E. 2. and was executed, Joan his wife survived him, E. 3. granted the Lands to Stephen de Bitterly and his heires. John Hawkins the heire of the said Joan in a Petition to the King discloseth this whole matter, and upon a Scir' facias against the Patentee hath judgement to recover the lands,

(o) Mich. 33. E. 3. Coram Rege Salop. in Thesaur.

Vide Sect. 665.

lands, for the reason here yeelded by our Author.

But if an estate be made to a man and a woman & their heires before mariage, and after they marry, the husbād and wife have moities betweene them, which is implyed in these words of our Author, Baron & sa feme.

¶ *Forsque un person en Ley.* Bracton saith, (p) vir & uxor sunt quasi unica persona, quia caro una & sanguis unus. It hath bin said, that if a reversion be granted to a man and a woman and their heirs, and before attornment they entermarrie, and then attornment is made, That the husband and wife shall have no moities in this case, no more than if a Charter of Feoffment be made to a man and a woman, with a Letter of Attornie to make Livery, they entermarry, & then Liverie is made secundum formam chartæ, in which case it is said that they have no moities. But certaine it is, that if a feoffemēt were made before the stat. of 27. H. 8. of uses to the use of a man (q) & a woman, & their heires, and they entermarry, and then the statute is made, if the husband alien it is good for a moity, for the statute executes the possession according to such qualitie, manner, forme, and condition, as they had in the use, so as though it vest during the coverture, yet the Act of Parliament executes severall moities in them, seeing they had severall moities in the use.

(p) Bract. li. 5. fo. 416. 20. H. 3. Discent 52. Lib. 4. fo. 68. Tokers case. Pl. Co. 483. Nichols case.

310. a.

(q) 4. Mar. Dyer 149. 3 Mar. Dyer 122. 29. H. 8. Dyer 32.

(r) 40. Ass p. 7.

If an estate be made to a villeine and his wife (r) being free, and to their heires, albeit they have severall capacities, viz. the villeine to purchase for the benefit of the Lord, and the wife for her owne, yet if the Lord of the villeine enter, and the wife survyveth her husband, she shall enjoy the whole land, because there be no moities betweene them.

A man makes a Lease to A. and to a Baron and Feme, viz. to A. for life, to the husband in taile, and to the Feme for yeares in this case it is said, That each of them hath a third part in respect of the severaltie of their estates.

(f) Pl. Com. 483. Nichols case.

If a Feoffement be made to a man and a woman and their heires with warrantie, (f) and they entermarrie, and after are impleaded and vouch and recover in value, moities shall not be betweene them, for though they were sole when the warrantie was made, notwithstanding at the time when they recovered and had execution they were husband and wife, in which time they cannot take by moities.

10. H. 7. 20. Fitz. 196

Albeit Baron and Feme (as Littleton here saith) be one person in law, so as neither of them can give any estate or interest to the other, yet if a charter of feoffment bee made to the wife, the husband as Attorney to the feoffor may make liverie to the wife, & so a feme covert that hath power to sell land by will, may sell the same to her husband, because they are but Instruments for others, and the state passeth from the Feoffor or Devisor.

(t) 11. E. 3. Cui in vita 9. 16. E. 3. ibid. 36. E. 3. ib. 20. 35. Ass. Pl. 15. 31. H. 6. tit. Estr. congeable 54. 19. H. 6. 45. F. N. B. 193. k.

If a husband, wife and a third person purchase lands to them and their heires, (t) and the husband before the Statute of 32. H. 8. cap. 1. had alened the whole land to a stranger in fee, and died, the wife and the other Joyntenant were Joyntenants of the right, and if the wife had

ley, & sont en semblable case, sicome estate soit fait a deux joyntenants, ou lun ad per force de joyntur lun moity en ley, & lauter lauter moitie, &c. En mesme le maner est lou estate est fait a le baron & a sa feme, & as auters deux homes, en tiel cas l' baron & sa feme nont forsq; la tierce part, & les auters deux homes les auters deux parts, &c. Causa qua supra.

law, and are in like case as if an estate be made to two joyntenants, where the one hath by force of the joynture the one moity in law, and the other the other moity &c. In the same manner it is where an estate is made to the husband and wife, and to two other men, in this case the husband and wife have but the third part, and the other two men the other two parts, &c. *Causa qua supra.*

¶ Lors serra dit del matter touchant joyntenancie en le chapter de Tenants en common, & tenant per Elegit, & tenant per Statute Merchant.

More shall be said of the matter touching joyntenancy in the chapter of Tenants in Common, and tenant by Elegit, and tenant by Statute Merchant.

had died, the other Joyntenant should have had the whole right by survivor, for that they might have joyned in a writ of Right, and the discontinuance should not have barred the entrie of the survivor, for that he claimed not under the discontinuance, but by title paramount above the same by the first feoffement, which is worthy of observation. But if the husband had made a feoffment in fee but of the moity, and he and his wife had dyed, their moity should not have survived to the other.

And for the better understanding of this diversity, divers things are worthy of observation.

First, That a right of action, & a right of entrie may stand in Joynture, for at the Common law the alienation of the husband was a discontinuance to the wife of the one moity, & a disseisin of the other, so as after the death of the husband, the wife hath a right of Action to the one moity and the other Joyntenant a right of entry into the other, but they are Joyntenants of the right, because they may joyne in a writ of Right. Vide Sect. 302.

Secondly, That a right of Action or a bare right of entrie cannot stand in joynture with a Freehold or Inheritance in possession, and therefore if the husband make a feoffment of the moitie, this was a discontinuance of that moity, * & the other Jointenant remained in possession of the Freehold and Inheritance of the other moity, which for the time was a severance of the Jointure, and so are all the bookes which seemed to varie amongst themselves, cleerely reconciled. *Vide the Statute of 32. H. 8. c. it is no discontinuance at this day.

If two Joyntenants be of a rent, and the one of them disseise the Tenant of the land, (u) this is a severance of the Joynture for a time, for the moity of the rent is suspended by unitie of possession, and therefore cannot stand in Joynture with the other moity in possession. And this is to be observed, That there shall never bee any survivor, unlesse the thing bee in joynture at the instant of the death of him that first dyeth: for the rule is, Nihil de re accrescit ei qui nihil in re quando jus accresceret, habet. (u) Pl. Com. 419. m. Bracebridges case.

Also if a man demiseth lands to two, to have and to hold to the one for life, & the other for yeares, they are no Joyntenants, for a state of freehold cannot stand in jointure with a term for yeares: and a reversion upon a freehold cannot stand in joynture with a freehold & Inheritance in possession, as shall be said in the next Chapter. Neither can a seisin in the right of a politique capacity stand in jointure with seisin in a naturall capacity, as shall be said hereafter. 46. E. 3. 21. 19 H. 6. 45. 37. H. 8. 8. 3. E. 4. 10.

If two Femes be joyntly seised, and they take Barons, and the Barons joyne in an alienation and dye, the wives are joyntenants of the right, and may joyne in a writ of right, & yet they may have severall writs of Cui in vita at their election, but when they have recovered in those severall writs, they shall be joyntenants againe. But if the Barons had aliened severally, this had bin a severance of the joynture for a time, for the reason abovesaid.

If two Joyntenants, the one for life, and the other in fee, lose by default, the one shall have a writ of Right, and the other a Quod ei deforceat, and yet when they have severally recovered, they shall be joyntenants againe. So it is if two Joyntenants be disseised, and an Assise is brought, and the one is summoned and severed, & the other recover the moitie, and after another Assise is brought, and he that recovereth is summoned and severed, and the other recover, albeit they severally recover, yet they are joyntenants againe.

And in all cases where the Joyntenants pursue one joynt remedy, & the one is summoned and severed, and the other recover, he that is summoned & severed shall enter with him: but where their remedies be severall, there the one shall not enter with the other, till both have recovered, and the same Law is of Coparceners. If lands (w) be demised for life, the remainder to the right heires of I. S. and of I. N. I. S. hath Issue and dyeth, & after I. N. hath issue and dieth, the issues are not Joyntenants, because the one moity vested at one time, and the other moity vested at another time. And yet in some cases there may be Joyntenants, and yet the estate may vest in them at severall times. Vid. Lit. cap. Remitter, the last case. 10. H. 6. 10. 31. H. 6. tit. Entre congeable. 46. E. 3. 21. b. 3. E. 4. 10. 37. H. 6. 8. (w) 24. E. 3. 29. 18. E. 3. 28. 38. E. 3.

If a man (x) make a feoffement in fee to the use of himselfe and of such wife as he should afterwards marrie, for terme of their lives, & after he taketh wife, they are joyntenants, and yet they come to their estates at severall times. (x) 17. El. Dyer Brents case.

And so it is if I disseise one to the use of two, and the one agrees at one time, & the other at another, yet they are Joyntenants.

In this section are three (&c.) the first and second are at large explaned before, the last is intended where more parties take than three.

Chap. 4. Of Tenants in Common. Sect. 292.

TEnants en Common ſont ceux, que ont terres ou tenemẽts en fee ſimple, fee taile, ou pur terme de vie, &c. les queux ont tielx terres ou Tenements per ſeverall titles, & nemy per joynt title, & nul de eux ſcavoit de ceo ſon ſeverall, mes ils doient per la Ley occupier tiels terres ou tenements en commõ, & pro indiviſo a prender les profits en common. Et pur ceo que ils aviendront a tielx terres ou tenements per ſeverall titles & nemy per un joynt title, & lour occupation et poſſeſſion ſerra per la ley perenter eux en common, ils ſont appels Tenaunts en common. Sicome un home enfeoffa deux Joyntenants en fee, & lun de eux alien ceo que a luy affiert a un auter en fee, ore le alienee & lauter Joyntenant ſont Tenants en Common, pur ceo que ils ſont eins en tiels Tenements per ſeverall titles, car la alienee vient eins en la moitie per la feoffement dun des Joyntenants, & lauter Joyntenants ad lauter moitie, per force de le primer Feoffment fait a luy, & a ſon compagnion, &c. Et iſſint ils ſont eins per ſeverall titles, ceſtaſcavoir, per ſeverall feoffements, &c.

TEnants in Common are they which have lands or Tenements in Fee-ſimple, fee taile, or for terme of life, &c. and they have ſuch Lands or Tenements by ſeverall Titles, and not by a joynt title, and none of them know of this his ſeverall, but they ought by the Law to occupie theſe Lands or Tenements in Common, and *pro indiviſo*, to take the profits in Common. And becauſe they come to ſuch lands or Tenements by ſeverall titles, and not by one joynt title, and their occupation and poſſeſſion ſhall be by Law betweene them in common, they are called Tenants in Common. As if a man infeoffe two Joyntenants in Fee, and the one of them alien that which to him belongeth, to another in Fee, now the Alienee & the other joyntenant are Tenants in Common, becauſe they are in in ſuch tenements by ſeverall titles, for the Alienee commeth to the moitie by the Feoffement of one of the Joyntenants, and the other jointenãt hath the other moity by force of the firſt feoffement made to him and to his companion, &c. And ſo they are in by ſeverall Titles, that is to ſay, by ſeverall Feoffements, &c.

Flet. li. 3. ca. 4.

CLittleton having ſpoken of Parceners which are onely by deſcent, & of Joyntenants which are only by purchaſe, and by joynt title, ſpeaketh now of Tenants in Common, which may be by three meanes, viz. by Purchaſe, by Deſcent, or by Preſcription, as hereafter in this Chapter ſhall appeare.

¶ Or

¶ *Ou pur terme de vie, &c.* Here (&c.) implyeth pur terme dauter vie, or for terme of yeares, or for any other fixed Estate in the Land.

And here it appeareth that the essentiall difference betweene Joyntenants and Tenants in Common, is, that Joyntenants have the Lands by one joynt Title, and in one Right, and Tenants in common by several Titles, or by one Title and by several Rights, which is the reason that Joyntenants have one joynt Freehold, and Tenants in common have several Freeholds, onely this property is common to them both, viz. that their occupation is undivided, and neither of them knoweth his part in severall. Vide Sect. 256.

The Example that Littleton putteth in this Section is perspicuous, and needeth no explication.

Sect. 293.

¶ Et est a scavoir, que quant il est dit en aucun Lieur, q̄ home est seisie en fee saums plus dire, il serra entendue en fee simple, car il ne serra entendue per tiel paroll (en fee) que home est seisie en fee taile, sinon que soit mis a ceo tiel addition, fee tayle, &c.

AND it is to be understood that when it is said in any Book, that a man is seised in fee, without more saying, it shall be intended in fee simple, for it shall not be intended by this word (in fee) that a man is seised in fee tayle, unlesse there be added to it this addition, fee tayle, &c.

¶ This is evident, and secundum excellentiam, it shall be taken for the highest and best fee, and that is fee simple. Vide devant. Sect. 99.

¶ *Addition en fee tayle, &c.* Here is implyed a maxime in Law, viz. that Additio probat minoritatem, as it is vulgarly said, the yonger sonne giveth the difference. Max:

Section 294.

¶ Item si 3. Joyntenants sont, & un de eux alien ceo que a luy affiert a un auter home en fee, en cest cas lalienee est tenant en common ovesque les auters deux joyntenants, mes uncore les auters 2. joyntenants sont seisies de deux parts joyntment que remain, & de ceux deux parts le survivor enter eux deux tient lieu, &c.

ALso if three Joyntenants be, and one of them alien that which to him belongeth to another man in fee, In this case the alienee is Tenant in common with the other two Joyntenants, but yet the other two Joyntenants are seised of the two parts which remaine joyntly, and of these two parts the Survivor betweene them two holdeth place, &c.

¶ This needeth no explication, onely the (&c.) in the end of this Section implyeth that the same Law is where there be more Joyntenants than three.

Sect. 295.

¶ Item ſi ſoient deux Joyntenants en fee, & lun dona ceo que a luy affiert a un auter en le tayle, & lauter done ceo que a luy affiert a un auter en le tayle, les donees ſont tenants en common, &c.

Also if there be two Joyntenants in fee, and the one giveth that to him belongeth to another in tayle, and the other giveth that to him belongs to another in taile, the Donees are Tenants in common, &c.

Vide Sect. 300.

¶ The (&c.) in the end of this Section implyeth, that ſo it is when a Leaſe for life, or pur auter vie is made, for in that caſe alſo the leſſees are tenants in common.

Section 296.

¶ *Si terres ſont dones a deux homes, &c.* Of this ſufficient hath been ſpoken in the Chapter (a) of Joyntenants.

(a) Sect. 283.

¶ *Mes ſi terres ſont dones a deux Abbes, &c.* In this caſe of the two Abbots in reſpect of their ſeveral capacities, albeit the words be joint, yet the Law (b) doth adjudge them to be ſeverally ſeiſed.

(b) 7. H. 7. 9 b. 16. H. 7. 15. b. 3. H. 7. 14. 10. E. 4. 16 b. 5. H. 7. 25. 18. E. 27. 49. E. 3 25. b. Vide Sect. 200.

The (&c.) in the end of this Section implyeth, that ſo it is if any (c) body Politique or Corporate, be they Regular, as dead perſons in law (whereof our author here ſpeaketh) or Secular: as if

(c) 4. H. 7. 45. 18. E. 3. 27. b.

¶ Mes ſi terres ſont dones a deux homs & a les heires de lour deux corps engendres, les donees ount joynt eſtate pur terme de lour vies, & ſi cheſcun de eux ad iſſue & deby, lour iſſues tiendront en common, &c. Mes ſi terres ſont dones, a deux Abbes, ſicome al Abbe de Weſtminſter, & al Abbe de S. Albon, a aver & tener a eux & a lour ſucceſſors, cest cas ils ont maintenant al commencement eſtate en common, & nemy joynt eſtate. Et le cauſe eſt, purceo q cheſcun Abbe, ou auter Soveraigne, de meaſon de Religion, devant que il fuit fait Abbe, ou Soveraigne, &c. il fuit forſque come mort perſon en ley, & quant il eſt fait Abbe, il eſt come un home perſonable en Ley tantſolem a purchaſer & aver terres ou tenements, ou

But if lands be given to two men, and to the heirs of their two bodies begotten, the donees have a joynt Eſtate for terme of their lives, and if each of them hath iſſue, and die, their iſſues ſhall hold in Common, &c. But if lands be given to two Abbots, as to the Abbot of *Weſtminſter*, and to the Abbot of Saint *Albons*, to have and to hold to them and to their Succeſſors, In this caſe they have preſently at the beginning an eſtate in Common, and not a joynt eſtate. And the reaſon is, for that every Abbot or other ſoveraigne of a houſe of religion, before that he was made Abbot or Soveraigne, &c. was but as a dead perſon in law, and when he is made Abbot, he is as a man perſonable in Law onely to purchaſe and have lands or tenements or other things to the uſe of his Houſe, and

auters choſes al uſe de ſa meaſon, & nemy a ſon proper uſe, come auter ſecular home poit, & p̃ ceo al commencemẽt ô lour purchaſe ils ſõt tenãts en common, & ſi lun de eux devie, Labbe que ſurveſquiſt navera my tout per le ſurvivour, mes le ſucceſſor de Labbe q̃ mozuſt tiendra le moitie en common ove Labbe que ſurveſquiſt, &c.

not to his owne proper uſe, as another ſecular man may, and therefore at the beginning of their purchaſe they are tenants in common, and if one of them die, the Abbot which ſurviveth ſhall not have the whole by ſurvivor, but the Succeſſor of the Abbot which is dead, ſhall hold the moity in common with the Abbot that ſurviveth, &c.

lands be given to two Biſhops, to have and to hold to them two and their Succeſſours: Albeit the Biſhops were never any dead perſons in Law, but alwayes of capacitie to take, yet ſeeing they take this Purchaſe in their politique Capacitie, as Biſhops, they are preſently

Mes qr ſi le reason de ceo cas ne en regard de corps politiq, p intendm de ley ne voit morust, & ſi ſimt lour ne ascun morant poit ne ascun survivor.

Tenants in common, becauſe they are ſeiſed in ſeverall rights, for the one Biſhop is ſeiſed in the right of his Biſhoprick of the one moitie, and the other is ſeiſed in the right of his Biſhoprick of the other moitie, and ſo by ſeverall titles and in ſeverall capacities. Whereas Joyntenants ought to have it in one and the ſame right and capacitie, and by one and the ſame joynt Title. The like Law is if Lands be given to two Perſons and their Succeſſors, or to any other ſuch like Eccleſiaſticall bodies Politique or Incorporate, as hath beene ſaid.

If a Corodie be granted to two men and their heires, in this caſe becauſe the Corodie is incertaine, and cannot be ſevered, it ſhall amount to a ſeverall grant, to each of them one Corodie, for the perſons be ſeverall, and the corodie is perſonall.

Sect. 297.

¶ Item ſi trꝰ ſoient dones a un Abbe, & a un Secular home, a aver & teñ a eux, s. al Abbe, & a ſes ſucceſſors, & al Secular home a luy & a ſes heires, donques ils ount eſtate en cõmon, Cauſa qua ſupra.

ALſo if lands be given to an Abbot & a Secular man, to have and to hold to them, *viz.* to the Abbot and his Succeſſors, and to the Secular man, to him and to his heires, they have an eſtate in common, *Cauſa qua ſupra.*

¶ AND ſo it is if lands be give to the Parſon of Dale, and to a Lay man, to have and to hold to them, that is to ſay, to the Parſon and his Succeſſors, and to the Lay man and his heires, they are preſently Tenants in Common for the cauſes aboveſaid. So of a Biſhop, &c. Et ſic de ſimilibus.

F.N.B. 49. I. 16. E. 3. Joindre en aſſiſe 27. 16. Aſſ. p. 1. 2. R. 3. 16. 7. H. 7. 9. 13. H. 8. 14.

If Lands bee given to the King and to a Subject, To have and to hold to them and to their heires, yet they are

Pl. Com. in Sir Stig. Barkley's caſe. fol.

Per cõ reason le roy tient tout ſon droit iure Coronæ.

Tenants in Common, and not Joyntenants, for the King is not ſeiſed in his naturall Capacitie, but in his Royall and politique capacitie, in jure Coronæ, which cannot ſtand in jointure with the ſeiſin of the ſubject in his naturall Capacity. So likewiſe if there be two Joyntenants, and the Crowne deſcend to one of them, the Joynture is ſevered, and they are become tenants in common. But if Lands be given to A. de B. Biſhop of N. and to a Secular man, to have and to hold to them two, and to their heires, In this caſe they are Joyntenants, for each of them take the lands in their naturall Capacitie.

If lands be given to John Biſhop of Norwich, and his Succeſſors, and to John Overall Doctor of Divinity and his heires being one and the ſame perſon, hee is Tenant in Common (d) with himſelfe. But our Authors rules doe not hold in Chattels reals, or perſonals: for if a leaſe for yeares be made, or a ward granted to an Abbot and a ſecular man, or to a Biſhop and Secular man, or if goods be granted to them, they are Joyntenants, becauſe they take not in their Politique Capacity.

(d) 13. H. 8. 14. 16. H. 7. 15. 9. H. 6. 25. 45. E. 3. 25.

Sect.

Sect. 298.

¶ AND the reason is, because they have several Freeholds and an occupation pro indiviso.

Here is to be observed that the Habendum doth sever the premises that Prima facie seemed to be joynt, for an expresse estate controlls an implyed estate, as hath beene said.

¶ Item si terres soient donees a deux a aver, & tener, s. lun moitie a lun & a ses heires, & lauter moity a lauter & a ses heires, ils sont tenants en common.

ALso if lands be given to two to have and to hold, s. the one moity to the one and to his heires, and the other moity to the other and to his heires, they are tenants in Common.

Sect. 299.

¶ AND the like law is, if the feoffement bee made of a third part or a fourth part, &c. And if there bee an Advowson appendant, they are also Tenants in common of the Advowson. And albeit it is said that such a feoffement of a moitie or third part, &c. is not good without writing, for that (as they say) a man cannot create an uncertain estate in land by Parol, yet is the Law cleere that such a feoffement is good by Parol without writing, and such an uncertaine estate shall passe by Livery, and so it appeareth in our bookes.

11. Ass. Pl. 16.

45. E. 3. 12. 44. Ass. 11.

21. E. 4. 22. b.

¶ Item si home seisie de certain terres enfeoffa un auter de le moity de mesm̃ la terre sans ascun parlance de assignement ou limitation de mesme la moitie en severalty al temps del feoffment, donq̃s le feoffee & le feoffor tiendront lour parts de la terre en common.

ALso if a man seised of certaine lands infeoffe another of the moity of the same land without any speech of assignement or limitation of the same moity in severalty at the time of the feoffment, then the Feoffee & the Feoffor shall hold their parts of the Land in common.

If a Verdict finde that a man hath Duas partes manerii, &c. in tres partes divisas, this shall not be intended to be in common, but if Verdict be in tres partes dividendas, then it seemeth that they are Tenants in Common by the intendment of the Verdict.

21. E. 4. 22. b.

5. E. 3. 23. 67.
Temps E. 1. Feoffments 115. 34. E. 1. quar. imped. 279. 10. El. 7. Dyer 28. 22. E. 3. 6. Feoffments 116. 6. E. 3. 56. 39. E. 3. 38. 9. E. 3. 16. 17. E. 3. 3. 18. E. 3. 43. 43. E. 3. 26. 23. Ass. 8. 33. H. 6. 5. a.

But if a man be seised of a Mannor whereunto an Advowson is appendant, and maketh a feoffment of three Acres parcell of the Mannor together with the Advowson to two, To have and to hold the one moity together with the moitie of the Advowson to the one and his heires, and the other moity together with the other moity of the Advowson to the other and his heires, this cannot be good without deed, for the Feoffor cannot annere the Advowson to these three acres, and disannere it from the rest of the Mannor without Deed.

Sect. 300.

¶ ET est ascavoir, que en mesm̃ le maner come est avantdit de tenants en common, de terres ou tenits en fee simple, ou en fee taile, en mesme le maner poit estre

AND it is to bee understood, that in the same manner as is aforesaid of tenants in common, of lands or tenements in fee simple, or in fee taile, in the same

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de tenants a term de vie. Sicom deux joyntenants sont en fee, & lun lessa a un home ceo que a luy affiert pur terme de vie, & lauter joyntenant lessa ceo que a luy affiert a un auter pur terme de vie, &c. les deux lessees sont tenants en common pur lour vies, &c.

manner may it be of tenants for terme of life. As if two joyntenants be in fee, and the one letteth to one man that which to him belongeth for terme of life, and the other joyntenant letteth that which to him belongeth to another for terme of life, &c. the said two lessees are tenants in common for their lives, &c.

Vid. Sect. 295. where this is sufficiently explained before.

Sect. 301.

¶ Item si hom̃ lessa terres a deux homes pur terme de lour vies, & lun granta tout son estate de ceo que a luy affiert a un auter, donqs lauter tenant a terme de vie, & celuy a q̃ le graunt est fait sont tenants en common, durant le tẽps que ambideux les lessees sont ẽ vie.

¶ Et memorandum, que en touts auters tiels cases, coment que ne sont icy expressemẽt moves ou specifies, si sont en semblable reason, sõt en semblable ley.

ALso if a man let lands to two men for terme of their lives, & the one grants all his estate of that which belongeth to him to another, then the other tenant for terme of life, and he to whom the grant is made, are tenants in common during the time that both the lessees be alive.

¶ And *memorandum*, that in all other such like cases although it be not here expressely moved or specified, if they be in like reason, they are in the like law.

¶ And so it is if lands be letten to two for term of their lives, Et eorum alteriusdiutius viventi, and one of them granteth his part to a stranger, whereby the joynture is severed, and dyeth: here shall be no survivour, but the Lessor shall enter into the moity, and the survivour shall have no advantage of these words Et eorum alteriusdiutius viventi for two causes. First, for that the joynture is severed. Secondly, for that those words are no more than the Common Law would have implyed without them, and Expressio eorum quæ tacitè insunt nihil operatur. Hereby it appeareth that in case of Leases for life it is more beneficiall for the lessor to have the joynture severed than to have it continue. 30. Ass. 18.

¶ *Si soient en semblable reason sont ẽ semblable ley.* Here Littleton citeth one of the Maxines of the Common Law, That wheresoever there is the like reason, there is the like Law. Ubi eadem ratio, ibi idem jus, or Ubi eadem ratio, ibi idem jus esse debet, for Ratio est anima legis. And therefore Ratio potest allegari deficiente lege. But it must be Ratio vera & legalis & non apparens. And here it appeareth that Argumentum à simili is good in Law, Sed similitudo legalis est casuum diversorum inter se collatorum similis ratio, quod in uno similium valet, valebit in altero, dissimilium dissimilis est ratio. Vid. Sect. 1. Max:

Sect.

Sect. 302.

¶ *SI deux Joynenants en fee, &c.*

This needeth no explanation.

¶ *Et sur ceo case un question puit surder, &c.*

Vide 33.H.6.4.b.

Here Littleton maketh a question, & sheweth the reasons on both sides, and concludes with a Quære. when Littleton maketh a question, and sheweth the reason on both sides, the latter is ever his owne, (a) and the better. But time hath made this question without question, for now all agree, that the jointure is severed for the time, according to the latter opinion here set down in Littleton, whose reasons are unanswerable: for many times the change of the freehold makes an alteration or change of the reversion. As if Tenant in Tayle, or the husband seised in the right of his wife, or tenant for life make a lease for life of the Lessee, in everie of these cases the Lessour doth gaine a new reversion by wrong, as shall be said more at large in the Chapter of Discontinuance, and if the elder brother grant the reversion (expectant upon a Freehold) for life, it shall cause possessio fratris, as hath beene sayd.

(a) Vide Sect. 340. 375. 439, 440, 462, 463, 464, 482, 483 648, 720, 729. Vide Sect. 170.

¶ *Per mesme le reason le reversiõ que est dependant sur mesme le franktenement est sever de le Joynture, &c.*

Vide Sect. 8. 7.H.5.

7.H.7.9.

If two Joyntenants in fee be, and they both joyne in a Lease to an Abbot and a secular man for terme of their lives, here the reversion that is dependant upon severall freeholds is severed. And so it is if they joyne in a lease to two secular men, to have and to hold the one moity to the

¶ Item si deux Joyntenãts en fee sont, & lun lessa ceo q̃ a luy affiert a un auť pur t̃me de sa vie, le Tenant a terme de vie durãt sa vie, & lauť Joyntenaunt que ne lessa pas, sont Tenants en cõmon. Et sur ceo case un question puit surder sicome en tiel case, mittomus que l̃ lessor ad issue & obie, vivant lauter Joyntenant son companion, & vivant l̃ tenãt a terme de vie, l̃ question poet estre tiel: Si le reversion de la moity que le lessor avoit discẽdra al issue le lessor, ou que lauť jointenant avera cel reversion per le survivor. Aliis ont dit en ceste case, que lauť jointenant avera cel reversion p̃ le survivor, & lour reason est tiel, s̃ que quant les jointenants fueront joyntment seisies en fee simpl̃, &c. coment que lun de eux fist estate de ceo que a luy affiert pur terme de sa vie, & coment q̃ il ad sever le frãktenemẽt de ceo que a luy

Also if there bee two Joyntenants in fee, and the one letteth that to him belongeth to another for terme of his life, the tenant for term of life during his life, and the other joyntenant wch did not let, are tenants in Common. And upon this case a question may arise, as in such case admit that the lessor hath issue and die, living the other Jointenant his companion, and living the Tenant for life, the question may be this, whether the reversion of the moity which the lessor hath shall descend to the Issue of the lessor, or that the other joynténant shall have this reversion by the survivor. Some have said in this case that the other jointenant shal have this reversiõ by the survivor: and their reason is this, s. That whẽ the jointenãts were jointly seised in fee simple, &c. although that the one of thẽ make an estate of that to him belongeth for terme of his life, and although that

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affiert per l'leaſe. uncore il nad ſever l'fee ſimple, mes le fee ſimple demurt a eux joyntmẽt come il fuit adevant. Et iſſint ſemble a eux, que lauter Joyntenant que ſurveſquiſt, avera le reverſion per l'Survivour, &c. Et auters ont dit le contrarie, & ceo eſt lour reaſon, ſ. que quaunt lun des Joyntenants leſſa ceo que a luy affiert a un auter pur termẽ de ſa vie, per tiel Leaſe le Franktenemẽt eſt ſever d̃ le joynture. Et per meſme le reaſon le Reverſion que eſt dependant ſur meſme le Franktenement, eſt ſever de le Joynture. Auxy ſi le Leſſour uſt reſerve a luy un annuall Rent ſur le Leas, le Leſſor ſolement averoit le Rent, &c. le q̃l eſt un proofe q̃ le reverſion eſt ſolemẽt en luy, & que lauter nad riens en cel reverſion, &c. Auxy ſi le tenant a terme de vie fuit impleade, &c. & fiſt default apres default, donques le Leſſor ſerroit de ceo ſolemẽt receive a defender ſon droit, &

he hath ſevered the freehold of this which to him belongs by the leaſe, yet he hath not ſevered the fee ſimple, but the feeſimple remains to them joyntly as it was before. And ſo it ſeemeth to them, that the other Jointenant which ſurviveth ſhall have the reverſion by the ſurvivor, &c. And others have ſaid the contrary, and this is their reaſon, ſ. that when one of the Joyntenants leaſeth that to him belongeth, to another for terme of his life, by ſuch Leaſe the freehold is ſevered from the joynture. And by the ſame reaſon the reverſion which is depending upon the ſame freehold is ſevered from the joynture. Alſo if the leſſor had reſerved to him an annuall Rent upon the leaſe, the leſſor only ſhould have had the Rent, &c. the which is a proofe, that the reverſion is onely in him, and that the other hath nothing in the reverſion, &c. Alſo if the Tenant for terme of life were impleaded, and maketh default after default, the leſſor ſhall be onely received for this, to defend

one for life, & the other motty to the other for life, for both theſe caſes are warranted by the authority of Littleton.

If two Joyntenants be of a leaſe for twenty one yeares, & the one of them letteth his part for certaine yeares, part of the terme, the Joynture is ſevered, and ſurvivor holdeth not place, for a terme for a ſmall number of yeares is as high an intereſt, as for many more yeares, & ſo was it reſolved Hil. 18. El. Reginæ, in Communi Banco, *which I my ſelfe heard. *Hil. 18. Eliz.

If two Coparceners be in fee, and the one make a Leaſe for life, this is no ſeverance of the Coparcenary, for notwithſtanding the Lord ſhall make one avowrie upon them both.

But if two Joyntenants be, and one maketh a leaſe for life, this is a ſeverance of the joynture, as Littleton here taketh it, and ſeverall avowries ſhall be made upon them.

¶ *Auxy ſi le Leſſor uſt reſerve un annual rent, le leſſor ſolement averа le rent, &c.* But if two Joyntenants make a leaſe for life, reſerving a rent to one of them, the rent ſhall enure to them both, becauſe the reverſiõ remains in joynture, unleſs the reſervation be by deed indented, and then he onely to whom it is reſerved ſhall have it. But if they make a leaſe by Deed indented, reſerving or ſaving the reverſion to one of them, that is void, becauſe they had the reverſion before, but the rent is newly created. 5. E. 4. 4. 27. H. 8. 16. 2. 7. E. 4. 25. 14. Ed. 3. Br. 282.

And ſo it is if ſuch a Leſſee for life ſhould ſurrender to one of them, it ſhall enure to them both for that they have a joynt reverſion. But if the Leſſee grant his eſtate to one of them, no part of it ſhall enure to his Companion, becauſe for the motty belonging to his companion, it is in eſſe 5. E. 4. 4.

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in him to whom the grant is made, the reuersion to the other in fee.

38.H.6.24.b. 2.R.3.tit. Extinguishment 3.

If two joyntenants make a lease for life, the remainder to his companion in fee, this is a good remainder of his moitie to his Companion.

¶ *Donques le feoffer ferra de ceo solement receive, &c.*

¶ *Receive*, Receit, Receptio, is in many cases where a person, partie to a writ or an estranger thereunto, to whom a reuersiõ or remainder appertaineth, shall in default of another person bee received to defend his or her Freehold or inheritance, the Law saith, Admittatur, &c. And this admission or receit, is given by sundry statutes, (f) (and this is that which the Civilians call Admissio tertiæ personæ prointeresse.) Et in casibus prædictis duæ concurrunt Actiones: Una inter petentem & tenentem, & alia inter tenentem, jus suum ostendentem & petentem.

(f) W.2.cap.3. 20.E.1. Statute de defensione Juris. 13.R.2.cap.16.

¶ *Pur ceo que un Franktenement ne poet per nature de Joynture, estre annexe a un reversion.* And this is the principall reason, and of this sufficient hath beene said in the Chapter of Joyntenants, Sect. 291.

¶ *&c.* This &c. in the end of this Section, implieth any other heir lineall or collaterall.

son Compagnion en cest case en nul manner serroit receive, le quel prove le reversion del moity destre tantsolement en le Lessor: Et sic per consequens, si le Lessour morust, vivant le lessee per terme de vie, le reversion discendra al heire de Lessour, & nemy deviendra a lauter Joyntenant per le survivor, Ideo quære. Mes en cest case si celuy Joyntenant que ad le franktenement ad issue & devie, vivant le lessor & lessee, donques il semble, que mesme lissue aũa cest moity en demesne, & en fee per discent, pur ceo que un Franktenement ne poet per nature de Joynture estre annexe a un reversion, &c. et il est certaine, que celuy que lessa fuit seisie de le moitie en son demesne come de fee, & nulavera ascun joynture en son Franktenement, Ergo ceo discendra a son issue, &c. Sed quære.

his right, and his companion in this case in no manner shall be received, the which proveth the reversion of the moity to be onely in the Lessor: & so by consequent if the Lessour dieth, living the Lessee for terme of life, the reversion shall descend to the heire of the Lessour, and shall not come to the other Joyntenant by the survivor, *Ideo quære.* But in this case if that jointenant which hath the Freehold hath issue, & dies living the Lessor and the Lessee, then it seemeth that the same Issue shall have this moity in demesne, and in fee by descent, for that a freehold cannot by nature of Joynture bee annexed to a Reversion, &c. And it is certaine, That he which leased was seised of the moitie in his Demesne as of Fee, and none shall have any Joynture in his Freehold, therefore this shall descend to his Issue, &c. *Sed quære,*

Sect.

Sect. 303.

¶ Mes si issint soit q̄ la ley en cest cas est tiel, que si le lessor devie vivant le lessee, & vivant lauter joyntenant, que ad le franktenement de lauter moitie, que le reversion discendra al issue del lessor, donque est le joynture, & title que alcun de eux poit aver per le survivor, & le droit de le joynture anient, & tout oustorment defeat a touts jours. En mesme le maner est, si celuy joyntenant que ad le franktenement devy, vivant le lessor & le lessee, si la leisoit tiel que son franktenemēt & fee q̄ il ad en le moitie, discendra a son issue, donques le joynture serra defeat a touts jours.

But if it be so that the Law in this case be such, that if the lessor die living the Lessee, and living the other Joyntenant which hath the freehold of the other moity, that the Reversion shall descend to the Issue of the Lessor, then is the Joynture and title which any of them may have by the Survivour, and the right of the Joynture taken away, and altogether defeated for ever. In the same manner it is if that Joyntenant which hath the freehold dye living the Lessor and the lessee, if the Law be so as his freehold and fee which he hath in the moity shall descend to his Issue, then the Joynture shall be defeated for ever.

¶ *Donque est le joynture & title, &c. & le droit de le joynture anient, &c.*

And the reason of this is, for if the Joynture bee severed at the time of the death of him that first deceased, the benefit of the survivor is utterly destroyed for ever, as hath been said (*) afore in the Chapter of Joyntenants. But in the case aforesaid, if tenant for life dyeth in the life of both the Joyntenants, they are joyntenants againe as they were before. (*) Vide Sect. 291.

If two Joyntenants be in fee, & the one letteth his part to another for the life of the lessor, & the lessor dieth, some say that his part shall survive to his companion, for by his death the lease was determined. And others hold the contrary, and their reason is, first, for that at the time of his death the Joynture was severed, for so long as he lived the lease continued. And secondly, that notwithstanding the act of any one of the Joyntenants there must be equall benefit of Survivor as to the Freehold. But here if the other Joyntenant had first died, there had beene no benefit of Survivor to the Lessor without question.

Sect. 304.

¶ Tē si trois joyntenants sont, & lun releasa p̄ son fait a un d̄ ces cōpanions tout le droit que il avoit en le terre, donques ad celuy a que le release est fait le tierc̄ part de les ter-

And if three Joyntenants be, & the one releaseth by his deed to one of his companions all the right which he hath in the land, then hath he to whom the release is made the third part of

¶ Upon this case these two things are to be observed. First, that in this case this release doth enure by way of mitter lestate, and not (*) by way of Extinguishment, for then the Release should enure to his Companion also, and he is in the Per by him that maketh the Release. (a) But if hee had released to the other two, thē had it wrought no degree but

(*) 9. Eliz. Dyer 263. 19. H. 6. 17.
(a) 40. E. 3. 41. 13. E. 3. tit. Garr. 35. E. 3. release 43. 22. H. 6. 42. 14. E. 3. Briefe 28. 19. H. 6. 17. 33. H. 6. 5. 28. H. 6. 2. 37. H. 8. Alienation 31. 8. H. 4. 8. 10. E. 4. 3.

318.a but in ſuppoſition of Law, for many purpoſes they to whom the Releaſe is made (as hath beene ſaid) ſhall be ſuppoſed in from the firſt feoffor, as they ſhall deraigne the firſt warranty for the whole.

(b) The ſecond thing to bee obſerved is, that he to whom the releaſe is made hath a fee ſimple without theſe words (heires) as hath beene touched in the firſt Chapter of the firſt Booke, for that he to whom the releaſe is, is ſeiſed per my, & per tout, of the fee and Inheritance, as hath bin ſaid in the Chapter of Joyntenants. And note the like law is betweene Coparceners: and further if there be two Coparceners, and the one hath iſſue twenty daughters and dyeth, the other may releaſe to any one of the daughters her whole part, albeit ſhe to whom the releaſe is, hath not an equall part, but for the privity, and the individed eſtate the releaſe is good.

(b) 9.Eliz Dyer 263. 19.H.6.17.

res per force de le dit releas, & il & ſon companion, teignet les auters deux parts en joynture. Et quant al tierce part, que il ad per force de releas, il tient cel tierce part ove luy m & ſon companion en common.

the Lands by force of the ſaid releaſe, and he and his companion ſhall hold the other two parts in Joynture. And as to the third part which he hath by force of the releaſe, he holdeth that third part with himſelfe and his companion in common.

f. 288

But if two Joyntenants be of twenty Acres, and the one maketh a feoffment of his part in eighteene Acres, the other cannot releaſe his entire part, but only in two Acres, for that the Joynture is ſevered for the reſidue.

Sect. 305.

THis is evident upon that which hath beene ſaid before.

(c) And it is to bee underſtood that a Releaſe may enure foure manner of wayes, firſt by way of mitter leſtate, as here it appeareth. Secondly, by way of mitter la droit. Thirdly, by way of Extinguiſhment. Fourthly, by way of creation or enlargement of an Eſtate, as hereafter in this chapter ſhall appeare. And it is to bee obſerved that upon a releaſe that creates or inlargeth an Eſtate, or enures by way of mitter leſtate, a Rent may bee reſerved, but not upon a releaſe that enureth by way of mitter le droit, or which enures by way of Extinguiſhment.

(c) 10.Eliz.Bendloes 9.Eliz.Dyer 263.

See more of this in the Chapter of Releaſes.

10.E.4.3.b. 21.H.6.8.b.

The (&c.) in the end of this Section implyeth a diverſitie

CEteſt aſcavoir, q aſcũ ſoits un releas prendra effect, & urera pur mitter leſtate de celuy que fiſt le releas, a celuy a que le releas eſt fait, ſicome en le cas avantdit, & aury ſicome joynt eſtate ſoit fait a le baron & ſa feme, & a la tierce perſon & la tierce perſon releſſa tout ſon droit que il ad a le baron, adonque ad le baron la moitie que le tierce avoit, & la feme de ceo nad riens. Et ſi en tiel caſe le tierce releſſa a la feme nient noſmant le baron en le releas, donques ad la feme le moitie que le tierce avoit, &c. & le barõ nad riens de ceo forſq

AND it is to be obſerved that ſometimes a deed of releaſe ſhal take effect, & enure to put the eſtate of him which makes the releaſe to him to whom the Releaſe is made, as in the caſe aforeſaid, and alſo, as if a joynt eſtate be made to the husband and wife, and to a third perſon, and the third perſon releaſe all his right which he hath to the husband, then hath the Husband the moitie which the third had, and the wife hath nothing of this. And if in ſuch caſe the third Releaſe to the Wife not naming the Husband in the Releaſe, then hath the wife the moitie which the

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en droit ſa feme, pur ceo que en tiel caſe le releaſe urera de faire eſtate a celuy a que le releaſe eſt fait, de tout ceo que affiert a celuy que fait le releaſe, &c.

that which belongeth the releaſe, &c.

third had, &c. And the husband hath nothing of this but in right of his wife, becauſe that in this caſe the releaſe ſhall enure to make an eſtate to whom the releaſe is made of all to him which maketh

betweene a releaſe which enures by way of mitter leſtate (whereof Littleton here ſpeaketh) & a Releaſe that enures by way of Extinguiſhment: for of a releaſe enuring by way of extinguiſhment made to the husband, the wife ſhall take benefit, or to the wife, the husband ſhall take benefit, as hereafeer ſhall more at large be ſaid. *f.* 307.

Sect. 306.

CEt en aſcun cas un releas urera de mitter tout le droit q̄ il q̄ fait le releas ad a celuy a q̄ le releaſe eſt fait. Sicome home ſeiſie de certain tenemēts eſt diſſeiſie per deux diſſeiſors, il le diſſeiſee p ſon fait releſſa tout ſon droit, &c. a un des diſſeiſors, donque celuy a que releas eſt fait avera & tiendra touts les tenements a luy ſolement, & ouſtera ſon companion de cheſcun occupation de ceo. Et le cauſe eſt, pur ceo q̄ les deux diſſeiſors fuerōt eins encounter la ley, & quāt un de eux happe le releas de celuy que ad droit dentre, &c. ceſt droit en tiel cas veſtera en celuy a que le releas eſt fait, & eſt en tiel plyte, ſicome il que avoit droit avoit enter, & luy enfeoffa

ANd in ſome caſe a releaſe ſhall enure to put all the right which he who maketh the releaſe hath, to him to whom the releaſe is made. As if a man ſeiſed of certaine tenements is diſſeiſed by two diſſeiſors, if the diſſeiſee by his deed releaſe all his right, &c. to one of the diſſeiſors, then he to whom the releaſe is made ſhall have and hold all the tenements to him alone, and ſhall ouſt his companion of every occupation of this. And the reaſon is, for that the two diſſeiſors were in againſt the law, and when one of them happeth the releaſe of him which hath right of entry, &c. this right in ſuch caſe ſhal veſt in him to whom the releaſe is made, and he is in like plite, as hee which

CHere Littleton purſueth the ſecond part of his diviſion, viz. where a releaſe ſhall enure by way of Mitter le droit.

¶ *Diſſeiſie per deux diſſeiſors, &c.* The like law is, where there bee two joynt Abators or Intrudors which come in meerely by wrong. But if two men doe uſurpe by a wrongfull preſentation to a Church, and their Clarke is admitted, inſtituted and inducted, and the rightfull Patron releaſeth to one of them, this ſhall enure to them both, for that the uſurpers come not in meerely by wrong, but their Clarke is in by admiſſion, and inſtitution, which are judiciall acts. (f) And therefore an uſurpation ſhall work a Remitter to one that hath a former right.

(f) Fitz. N. B. 35. in 11. R. 2. quare Imp. 144.

¶ *Donques celuy a que le releas eſt fait avera & teignera touts les tenements, &c.* Here by operation of Law preſently upon the delivery of the releaſe the whole freehold and inheritance is veſted in him to whom the releaſe is made, and all the ſtate that the other Diſſeiſor had wholly devaſted: for right and wrong cannot conſiſt together, but the wrongfull eſtate giveth place to the rightfull. And the reaſon hereof is, for that as hath beene ſaid, the diſſeiſor to whom the releaſe was

was made was seised Per my & per tout, whereunto when the right cõmeth it excludeth the wrong: (e) for right which is lawfull, and wrong that is contrary to Law cannot stand together.

(e) Brit.fol.116.26.Ass. pl.39. 39.E.3.29. 21.H. 6.41. 22.H.6.22. 7.E. 4.25. 9.E.4.6. 11.H.7. 12. 20.H.7.5. 21.H.7.18. 12.E.4.tit.Discontin.1. 9.H.6.37. 21.H.6.52.

¶ *En tiel plite sicome il que avoit droit, avoit entr' & luy enfeoffe, &c.*

&c. Et la cause est, pur ceo que il q̃ avoit adevant estate per tort, s̃.p disseisin, &c. ad ore per le releas un estate droiturel.

hath the right had entred & enfeoffed him, &c. And the reason is, for that he which before had an estate by wrong, s. by disseisin, &c. hath now by the release a rightful estate

This (&c.) doth imply that this is true secundum quid, but not simpliciter, for as to the holding out of the joynt disseisor it amounts to as much as if he had entred and enfeoffed him to whom the release is made, but it doth not amount to an entry and feoffment simpliciter to all purposes, as shall be said hereafter in his proper place in the chapter of Releases.

Sect.307.

THere Littleton speaketh of the third kind of releases. And the reason of this diversity (implyed in the (&c.) in the end of this Section.) betweene the disseisors & their feoffees, is for that the Feoffees comming in by title and purchase, are intended in Law to have a Warrantie (which is much esteemed in Law) and therefore lest the warrantie should bee avoided, the release shall enure to both the feoffees in favour of Purchasors, and so the right and benefit of every one saved. (f) And in ancient time if the Disseisor had made a Feoffment in fee, or a gift in taile, or a lease for life, and the Feoffee, Donee, or Lessee had continued in seisin quietly a yeare and a day, the entrie of the disseisee had not beene lawfull upon him, and the reason was for the benefit and safegard of the warrantie (which was intended by Law) should have beene destroyed by the entry. But hereof also more shall be sayd in his proper place in the Chapter of Releases.

(f) 20.H.3. Ass.432. 1.Ass.13. 9.Ass 15. 21.Ass.28. 27.Ass.68. 32. 29.Ass.54. 43.Ass.17. 40.E.3.24. 50.E.3.21. 3.R.2.entry cong 38. 13.E.3. it.Ass.9. 12.Ass 20.

Cen alcũ cas un releas urera per voy dextinguishment, & en tiel case tiel releas aydera la joyntenant a q̃ le releas ne fuit fait, auncbien come luy a q̃ le release fuit fait. Sicome un home soit disseisie, & le disseisor fait feoffment a deux homes en fee, si le disseisee relessa per son fait a un de les feoffees, donques cel release ureſ a ambideux les feoffees, pur ceo q̃ les feoffees ont estate per la ley, s̃. per feoffment, & nemy per tort fait a nulluy, &c.

ANd in some case a release shall inure by way of extinguishment, and in such case such release shall ayd the joyntenant to whom the release was not made as well as him to whom the release was made. As if a man be disseised and the disseisor makes a feoffment to two men in fee, if the disseisee release by his deed to one of the feoffees this release shall enure to both the feoffees, for that the feoffees have an estate by the law, s. by feoffment, & not by wrong done to any, &c.

Sect.308.

CEmesme le maner est, si le disseisor fait un lease a un hõe pur terñ de sa vie, le remain-

IN the same manner it is, if the disseisor maketh a lease to a man for terme of his life, the re-

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der ouster a un auter en fee, ſi le diſſeiſee releſſa a le tenant a term d vie tout ſon droit, &c. cel releaſe urera auxibien a celuy en le remainder come a le tenant a terme de vie. Et la cauſe eſt, pur ceo que le tenant a terme de die vient a ſon eſtate per courſe de ley, & pur ceo cel releaſe urera, & prent effect per voy dextinguiſhment de droit de celuy que releſſa, &c. Et per cel releaſe le tenant a terme d vie nad pluis ample ne greinder eſtate, que il avoit devant le releaſe fait a luy, & le droit celuy que releſſa eſt tout ouſterment extinct. Et entant que ceſt releaſe ne poit enlarge leſtate de le tenant a terme de vie, il eſt reaſon que cel releaſe urera a celuy en le remainder, &c.

remainder over to another in fee, if the diſſeiſee releaſe to the tenant for terme of life all his right, &c. this releaſe ſhall inure as well to him in the remainder, as to the tenant for terme of life. And the reaſon is, for that the tenant for life commeth to his eſtate by courſe of law, and therefore this releaſe ſhall enure and take effect by way of extinguiſhment of the right of him which releaſeth, &c. And by this releaſe the tenant for life hath no ampler nor greater eſtate than he had before the releaſe made him, and the right of him which releaſeth is altogether extinct. And inaſmuch as this releaſe cannot inlarge the eſtate of the tenant for life, it is reaſon that this releaſe ſhall enure to him in the remainder, &c.

¶ Pluis ſerra dit de Releaſes en le Chapiter de Releaſes.

More ſhall be ſaid of Releaſes in the Chapter of Releaſes.

¶ *Ceſt releaſe urera auxibien a celuy en le remainder, come a le tenant a terme de vie, &c.* Of this and the reſt of this Section, for avoyding of repetition more ſhall be ſaid in his proper place in the Chapter of Releaſes.

¶ *Tout ſon droit &c.* Here by this (&c.) is implyed, title, demand, and other words which may transferre the right, &c. Alſo here is implyed of, in or to the land.

Sect. 309.

¶ Item ſi ſoient deux Parceners, & lun alien ceo que a luy affiert a un auſ, donques lauter parceñ & lalienee ſont Tenants en Common.

ALſo if two Parceners be, and the one alieneth that to her belongeth, to another, then the other Parcener and the Alienee are Tenants in Common.

This is evident and needeth no explication.

Sect. 310.

¶ Item nota que Tenants en common poient eſtre per titl de Preſcription, ſicome lun & ſes Auncеſtors, ou ceux que eſtate il

ALſo note that Tenants in Common may be by title of Preſcription, as if the one and his Auncеſtors, or they whoſe e-

ad en un moity ont tenus en common meſme le moity, ove lauter tenant que ad lauter moity & ove ſes auncestors ou ove ceux que eſtate il ad Pro indiviſo, de temps dont memory ne curt, &c. Et divers auters manners poient fait & causer homes deſtre Tenaunts en Common, que ne ſont icy expreſſes, &c.

ſtate hee hath in one moitie have holden in common the ſame moity with the other Tenant whith hath the other moity, and with his Anceſtors, or with thoſe whoſe ſtate he hath undivided, time out of minde of man. And divers other manners may make and cauſe men to be Tenants in Common, which are not here expreſt, &c.

11.E.3.Trans 212. 13.E. 3. Briefe 674. 8.H.6. 16.b. Lib.Intrat.23.

OF this, beſides Littleton, there is good authoritie in Law, as there is for all his other caſes throughout his three bookes, but Joyntenants cannot be by preſcription, becauſe there is ſurvivor betweene them, but not betweene Tenants in Common.

The two (&c.) in this Section are evident.

Sect. 311.

IN this Section wee learne two things: First, That in reall Actions, and in Actions alſo that are mixt with the perſonalty, Tenants in Common ſhall ſever in Action, becauſe they have ſeverall freeholds, and claime in by ſeverall titles, and therefore as they ſhall bee ſeverally by others impleaded, ſo ſhall they ſeverally implead others in all reall and mixt Actions, unleſſe it be in caſe of neceſſity for a thing entire, as hereafter in this Chapter ſhall appeare. And Littleton here putteth the caſe of the Aſſiſe which is mixt with the perſonaltie, and therefore hee needed not to put any caſe of any Præcipe quod reddat, for if it bee ſo in caſe of Aſſiſe a fortiori, in writs of higher nature, which is neceſſarily implyed in the (&c.) Now of ſuits that ſound in the realty, and of perſonall actions, Littleton ſpeaketh hereafter in this Chapter. The ſecond thing here to be learned, is the diverſity betweene Tenants in Common, and Joyntenants, which both of it ſelfe, and upon that which hath beene ſaid, is apparent.

4.E.4.18.b.

ITem en aſcũ cas tenants en common doyent aver de lour poſſeſſion ſeverall Actions, & en aſcũ cas ils joyndront en un Action. Car ſi ſont deux Tenants en common, & ils ſont diſſeiſies, ils doyent aver deux Aſſiſes, & nemy un Aſſiſe, car chelcun de eux covient aver un Aſſiſe d' lon moitie, &c. Et la cauſe eſt, pur ceo que tenants en common fueront ſeiſies, &c. per ſeverall titles. Mes autrement eſt de Joyntenants, car ſi ſoyent vint Joyntenants, & ils ſont diſſeiſies, ils averont ẽ touts lour noſmes forſque un Aſſiſe, pur ceo que ils nont forſque un joynt title.

ALſo in ſome caſe tenants in Common ought to have of their poſſeſſion ſeveral actions, and in ſome caſes they ſhall joyne in one Action. For if two Tenants in Common be, and they be diſſeiſed, they muſt have two Aſſiſes, and not one Aſſiſe, for each of them ought to have one Aſſiſe of his moity, &c. and the reaſon is, for that the Tenants in common were ſeiſed, &c. by ſeverall Titles. But otherwiſe it is of Joyntenants, for if twenty Joyntenants be, and they bee diſſeiſed, they ſhall have in all their names but one Aſſiſe, becauſe they have not but one joynt title.

314

315

Sect. 312.

ITem ſi ſoient trois Joyntenãts, & un releaſe a un de les companiõs tout l' droit que il ad, &c. & puis les auters deux ſont diſſeiſies de lentiertie, &c. en ceſt caſe les deux auters averont ſeverall Aſſiſes, &c. en ceſt forme, ſ. ils averont en lour ambideux noſmes, un Aſſiſe de les deux parts, &c. pur ceo que les deux parts ils teignont jointment al temps de le diſſeiſin. Et quant a le tierce part, celuy a que le releaſe fuit fait, covient aver de ceo un Aſſiſe en ſon noſme demeſne, pur ceo que il (quaunt a meſme le tierce part) eſt de ceo Tenant en Common, &c. pur ceo que il vient a cel tierce part per force del Releaſe, & nemy tantſolement per force del joynture.

ALſo if three Joyntenants be, and one releaſe to one of his fellowes all the right which hee hath, &c. and after the other two be diſſeiſed of the whole, &c. In this caſe the two others ſhall have ſeverall Aſſiſes, &c. in this manner, s. They ſhall have in both their names an Aſſiſe of the two parts, &c. becauſe the two parts they held joyntly at the time of the diſſeiſin. And as to the third part, he to whom the releaſe was made, ought to have of that an aſſiſe in his owne name, for that he (as to the ſame third part) is thereof Tenant in Common, &c. becauſe he commeth to this third part by force of the Releaſe, and not only by force of the Joynture.

¶ THis is put for an example (which ever doth illuſtrate the Rule) and is evident of it ſelfe: and the (&c.) in this Section needeth no further explication.

Sect. 313.

ITem quant a ſuer des Actions que touchant l' realtie, y ſont diverſities perẽter parceners que ſont eins per divers diſcents, & Tenaunts en common. Car ſi home ſeiſie de certaine terre en fee ad iſſue deux files & mozuſt, & les files entront, &c. & chelcun de eux ad iſſue un fits, & devieront ſaunz partition fait enter eux, per que lun moity diſcendiſt a le fits dun Parcener, & lauter moitie diſcẽdiſt al fits danter parcener, & ils

ALſo to the ſuing of Actions which touch the realty, there bee diverſities betweene Parceners which are in by divers deſcents, and Tenants in Common: For if a man ſeiſed of certaine land in Fee, hath iſſue two Daughters and dyeth, and the Daughters enter, &c. and each of them hath iſſue a Sonne, and die without partition made betweene them, by which the one moity deſcends to the Sonne of the one Parcener, & the other moity deſcends to the

entront

entront & occupiont en Common & ſont diſſeiſies, en ceſt caſe ils averont en lour deux noſmes un Aſſiſe & nemy deux Aſſiſes. Et la cauſe eſt, que coment que ils veignont eins per divers diſcents, &c. uncore ils ſont Parceners & briefe de Partitione facienda giſt enter eux. Et ils ne ſont parceners eyant regard ou reſpect tantſolement a le ſeiſin & poſſeſſion de lour meres, mes ils ſont Parceners pluis eyant reſpect a leſtate que diſcendiſt de lour ayel a lour meres, car ils ne poyent eſtre Parceners ſi lour meres ne fueront Parceners adevant, &c. Et iſſint a tiel reſpect & conſideration, ſ. quant a le primer diſcent que fuit a lour meres ils ont un title en parcenarie, le quel fait eux parceners. Et auxy ils ne ſont forſque come un heire a lour common Auncеſtor, ſ. a lour ayel de que la terre diſcendiſt a lour meres. Et pur ceux cauſes devant partition enter eux, &c. ils averont un Aſſiſe coment que ils veignont eins p ſeverals diſcents.

Sonne of the other Parcener, and they enter and occupie in common and be diſſeiſed, in this caſe they ſhall have in their two names one Aſſiſe, and not two Aſſiſes. And the cauſe is, for that albeit they come in by divers deſcents, &c. yet they are Parceners, and a Writ of Partition lieth betweene them. And they are not Parceners, having regard or reſpect onely to the Seiſin and poſſeſſion of their mothers, but they are parceners rather, having reſpect to the eſtate which deſcended from their Grandfather to their mothers, for they cannot be Parceners if their mothers were not Parceners before, &c. And ſo in this reſpect and conſideration, s. as to the firſt deſcent which was to their mothers, they have a title in Parcenary, the which makes them Parceners. And alſo they are but as one heire to their common Anceſtor, s. to their grandfather, from whom the land deſcended to their mothers. And for theſe cauſes, before partition between them, &c. they ſhall have an Aſſiſe, although they come in by ſeverall deſcents.

Vide Sect. 243. ¶ This, upon that which hath beene ſaid in the Chapter of Parceners, is evident: where you may reade excellent points of learning, and diverſities concerning this matter, all which are here either expreſſed or implyed, as the ſtudious and diligent Reader will obſerve.

Sect. 314.

¶ *En ceſt caſe quant a le rent & liver de Pepper, ils averount deux Aſsiſes & quant a leſperuer on le Chival forſque un Aſsiſe.*

But for the better underſtanding hereof it is to bee knowne, That if two Te-

¶ Item ſi ſont deux Tenants en Common de certaine Terre en fee, & ils doneront cel terre a un home en le taile, ou leſſerõt a un home pur terme

ALſo if there bee two Tenants in Common of certaine Lands in Fee, and they give this Land to a man in Taile, or let it to one for terme of life, ren-

de

de vie, rendant a eux annuelment un certaine rent, & un liver de Pepper, & un esperuer, ou un chivall, & ils sont seisies de ceste service, & puis tout le rent est a-derere, & ils destreigneront pur ceo, & le tenant a eux fait rescous. En ceste cas quant a le rent & liver de Pepper ils averont deux Assises, & quant a lesperuer, ou le chival forsq; un Assise. Et la cause pur que ils averont deux Assises, quant a le rent & liver de Pepper, est ceo, entant que ils fueront tenants en common en severall titles, & quant ils ficront un done en le taple ou leas pur terme de vie, savant a eux le reversion, & rendant a eux certaine rent, &c. tiel reservation est incident a lour reversion, & pur ceo que lour reversion est en common, & per severall titles, sicome lour possession fuit devant, le rent, & auters choses que poient estre severes, & fueront a eux reserves sur le done, ou sur le leas, queux sont incidents per le ley a lour reversion, tiels choses issint reserves fueront de la nature del reversion. Et entant que l'reversion est a eux

dring to them yearly a certain rent, and a pound of Pepper, and a Hawke, or a Horse, and they be seised of this service, and afterwards the whole Rent is behind, and they distraine for this, and the tenant maketh Rescous. In this case as to the rent and pound of Pepper they shall have two Assises, and as to the Hawke or the Horse but one Assise. And the reason why then they shall have two Assises as to the rent and pound of Pepper is this, insomuch as they were Tenants in Common in severall titles, and when they made a gift in tayle or lease for life, saving to them the Reversion, and rendring to them a certaine rent, &c. such reservation is incident to their reversion, and for that their reversion is in common and by severall titles as their possession was before, the rent and other things which may be severed, and were reserved unto them upon the gift or upon the lease which are incidents by the Law to their reversion, such things so reserved were of the nature of the reversion. And in as much as the reversion is to them in common by severall titles, it behonants in Common bee, and they grant a rent of 20. shillings per annum, out of their land, the Grantee shall have two rents of 20. shillings for that every mans grant shall bee taken most strongly against himselfe, & therefore they be severall grāts in Law.

Pl. Com. Hill & Granges case 171. Vide Sect. 219. 2 p. 10. fol. 106 10 H. 7 Lofields case.

But if they two make a gift in taile, a lease for life, & reserving twenty shillings rent to them & their heires, they shall have but one 20. shillings, for they shall have no more than themselves reserved: and the Donee or Lessee shall pay but 20. shillings according to their owne expresse reservation: And albeit the reservation of rents severable bee in joynt words, yet in respect of the severall reversions the Law makes thereof a severance. Now for the rent, as namely 20. shillings or a pound of Pepper may bee severed. the one Tenant in Common may have an assise for the moity of 20. shillings, and the moity of a pound of Pepper, de medietate unius libræ piperis, but he cannot have an assise of ten shillings, or de dimidio libræ piperis. But for the Hawke or Horse, albeit they be Tenants in Common, they shall joyne in an assise, for otherwise they should bee without remedie, for one of them cannot make his plaint in Assise of the moity of a hawke, or of a horse, for the Law will never suffer any man to demand any thing against the order of nature

Vide 16. Ass. pl. 1. 16. E. 3. Joyndre en action 27.

ture or reason, as before it appeareth by Littleton, Section 129. Lex enim ſpectat naturæ ordinem. Alſo the Law will never enforce a man to demand that which hee cannot recover, and a man cannot recover (l) the moytie of a Hawke, Horſe, or of any other entire thing: Lex neminem cogit ad vana, ſeu inutilia. But in that caſe they ſhall joyne in an aſſiſe, and the reaſon is, Ne Curia Domini Regis deficeret in juſtitia exhibenda, or lex non debet deficere conquerentibus in juſtitia exhibenda. And if they ſhould not joyne, they ſhould have damnum & injuriam, & yet ſhould have no remedy (*) by law, which ſhould be inconvenient: but the Law will, that in every caſe where a man is wronged & endamaged, that he ſhall have remedie. Aliquid conceditur ne injuria remaneret impunita quod alias non concederetur.

Regula. Vide Sect.129.

(l) Lib.5.fol.21.

Regula.

Regula.

(*) 3.H.3.19.a

38.E.3.15. Regula.

en common per ſeverall titles, il covient que le rent, & le liver de Pepper, queux poyent eſtre severs, ſoyent a eux en common, & per ſeverall titles,, & de ceo ils averont deux Aſſiſes, & chescun de eux en ſon Aſſiſe ferra ſon pleint de le moity de le rent, & de le moity del liver de Pepper, mes de leſperver, ou de chival que ne poyent eſtre severs, ils averont forſque un Aſſiſe, car home ne poit faire un pleint en Aſſiſe de le moity dun eſperver, ne de le moity dun chival, &c. En meſme le maner eſt dauter rents & dauters ſervices que Tenants en Common ount en groſſe per divers titles, &c.

veth that the rent and the pound of Pepper which may be ſevered, be to them in common and by ſeverall titles. And of this they ſhall have two Aſſiſes, and each of them in his Aſſiſe ſhall make his plaint of the moity of the rent, and of the moity of the pound of Pepper. But of the Hawke or of the Horſe which cannot be ſevered, they ſhall have but one Aſſiſe, for a man cannot make a plaint in an Aſſiſe of the moity of a Hawke, nor of the moity of a horſe, &c. In the ſame manner it is of other Rents and of other Services which Tenants in Common have in groſſe by divers titles, &c.

(m) 5.H.7.8.13.E.2.quar. imp.170. 33.H.6.11. 6.E.4.10. 15.E.3.darr. preſentment 10.

(m) And Tenants in Common ſhall joyne in a quare impedit, becauſe the preſentation to the Advowſon is entire.

(n) 6.H.4.6.7. 45.E.3.10.30.H.6.Aſſ.39. 18.E.3.56.

(n) Alſo Tenants in Common of a Seigniory ſhall joyne in a writ of right of ward, and Raviſhment of ward for the bodie, becauſe it is entire.

If two Tenants in Common be of the wardſhip of the body, & one doth raviſh the ward, and the one Tenant in common releaſes to the Raviſher, this ſhall goe in benefit of the other tenant in Common, and he ſhall recover the whole, and this releaſe ſhall not be any barre to him. And ſo it is if two Tenants in Common be of an Advowſon, and they bring a Quare impedit, and the one doth releaſe, yet the other ſhall ſue forth, & recover the whole preſentment.

Two Tenants in common ſhall joyne in a detinue of Charters, and if the one be Nonſuit, the other ſhall recover.

18.E.3.56.

It is ſaid that tenants in common ſhall joyn in a Warrantia Chartæ, but ſever in Voucher.

¶ *Moitie de chival. &c.* Here is implyed, or any other entire rent or ſervice.

¶ *Per divers titles, &c.* That is, by ſeverall titles, and not by one joynt title, as hath been ſaid.

Sect. 315.

29.E.3.51. 43.E.3.24. 46.E.3.27. 5.H.4.3. 14.H.4.31. 3.H.6.57. 12.H.6.22. 22.H.6.14. 18.E.4.30. 2.R.3.16. 10.H.7.27. 21.H.7.22. 37.H.6.35. 21.E.4.12.

¶ *Averont tiels actions perſonels joyntment en touts lour noſmes, &c.* By this

CItem quant al actiõs perſonels tenants en common averont tiels actions

ALſo as to Actions perſonals Tenants in common may have ſuch actions per-

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ꝑsonals joyntment ẽ touts lour noimes, sicome de trespas, ou de offence que touche lour tenements en common, sicome de bruler lour measons, de enfreinder de lour closes, de pasture, degaster, & defouler des herbes, ỏ couper lour bois, ỏ pischer en lour pischary, & hujusmodi. Et en ceſt cas tenãts en common averont un action joyntment & recoveront joyntment lour damages, pur ceo que laction est en le personaltie, & nemy ẽ le realty, &c.

sonals joyntly in all their names as of trespas, or of offences which concerne their Tenements in Common, as for breaking their houses, breaking their Closes, feeding, wasting, and defouling their grasse, cutting their woods, for fishing in their Pischary, and such like. In this case Tenants in Common shall have one Action joyntly, and shall recover joyntly their damages, because the Action is in the personalty, and not in the realty, &c.

it appeareth that tenants in common shall have personall Actions joyntly. And it is to be observed, that where dammages are to be recovered for a wrong done to Tenants in Common, or Parceners in a personall Action, and one of them dye, the survivor of them shall have the action, for albeit the property or estate bee severall betweene them, yet (as it appeareth here by Littleton) the personall action is joynt.

¶ Et hujusmodi. Vide Sect.319 320.321.

Hereby is implyed a diversity betweene a chattle in possession, and a personall Chose in action belonging unto them. As if two Tenants in common be of land, and one doth a trespasse therein, of this action they are joyntenants, & the survivor shall hold place. 22.H.6.12.
So it is if two Tenants in common be of a Mannor, and they make a Baylife thereof, and one of them dyeth, the Survivor shall have the Action of Account, for the Action given unto them for the arrerages upon the Account was joynt. So it is if two Tenants in Common sow their land and one doth eate the same with his cattle, though they have the Corne in Common, yet the Action given to them for trespasse in the same is joynt, and shall survive. For the trespasse and dammage done to them was joynt, all which here is implyed by Littleton, who saith, that they shall have an Action joyntly, and the same Law is of Coparceners. 38.H.6.32.38. 126. 45.E.3.13.14. 37.H.6.32.38.

But if two Tenants in Common be of goods, as of an horse, or of any other goods personall, there if one dye, his Executors shall be Tenant in Common with the survivor.

¶ *Et nemy en le realtie, &c.* If two Tenants in Common be of an Advowson, & a stranger usurpe, so as the right is turned to an action, and they bring a writ of Quare impedit which concernes the realty, the sixe moneths passe, and the one dyeth, the writ shall not abate, but the survivor shall recover, otherwise there should bee no remedy to redresse this wrong. And so it is of Coparceners, and this is one exception out of our Authors rule. 38.E.3.5.17.E.3 11. 3.H. 5.Quare Imp.71. 14.H.4.12. 9.H.6.29. 22. H.4.14. 37.H.6.9.b.10. Eliz.Dyer 279. F.N.B.35. 9.E.3.36.37.Pl.Com. Seignior Barkleys case.

(*) But if three Coparceners recover land & damages in an Assise of Mortdancestor, albeit the judgement be joynt, that they shall recover the land and dammages, yet the dammages being accessory, though they be personall, doe in judgement of law depend upon the Freehold, being the principall which is severall. And though the words of the judgement be joynt, yet shall it be taken for distributive. And therefore if two of them dye, the entire dammages doe not survive, but the third shall have execution according to her portion, and this is another exception out of our Authors rule. But if all three had sued Execution by force of an Elegit, and two of them had dyed, the third should have had the whole by survivor, till the whole damages be paid. (*) 14 E.3.Execution 75. 45.E.3.3.b.

If the Aunt and Niece joyne in an action of Waste, for waste done in the life of the other sister, the Aunt shall recover the damages onely, because the same belongs not by Law to the Niece. And some hold the damages in that case to be the principall. 45.E.3.3.b.48.E.3.14. 11.H.4.16.b. 35.H.6. 23.b.11.E.2.Waste.145.

Sect. 316.

¶ Item si deux tenants en common font un lease de

ALso if two Tenants in Common make a lease of their Tenour

lour tenemẽts a un auter p̃ term̃ des ans, rendant a eux certaine rent annualment durant l'terme, si le rent soit aderere, &c. les tenants en cõmon averont un action de debt envers le lessee, & nemy divers actions, pur ceo que laction est en la personalty.

nements to another for terme of yeares, rendring to them a certaine Rent yearely during the terme, if the rent be behinde, &c. the Tenants in Common shall have an action of debt against the lessee, and not divers actions, for that the action is in the personalty.

This upon that which hath beene said is evident.

Sect. 317.

¶ Mes en avowry pur l'dit rent ils covient sever, Car ceo est en le realtie come le assise est supra.

But in an avowry for the said rent they ought to sever: for this is in the realty, as the assise is above.

This being an addition to Littleton, albeit it be consonant to Law, yet I omit it.

Vid.9.E.3.36.37. Pl.Com.Saunder Barkleys case.

Sect. 318.

¶ Item tenants en common poyent bien faire partition enter eux sils voilent, coment q̃ils ne serront compelles de faire partition per la ley, mes sils font enter eux partition per lour agreement & consent, tiel partition est assets bone, come est adjudge en le liver dassises.

Also tenants in common may well make partition betweene them if they will, but they shall not be compelled to make partition by the Law, but if they make partition betweene themselves by their agreement and consent, such partition is good enough, as is adjudged in the booke of Assises.

Of this sufficient hath beene said in *the chapter of Parceners and Joyntenants.

* Vid. Sect. 259. 290. 247. 264.

¶ *En le liver dassises.* This book is of great Authority in Law, and is so called because it principally containeth the proceeding upon writs of Assise of Novel disseisin, which in those dayes was Festinum & frequens remedium.

(o) 19. Ass. p. 1. 30. Ass. p. 8. 37. E. 3. 22.

Sect. 319.

¶ Item sicome y sont tenãts en common de terres & tenements, &c. cõe est avantdit: en meisme le maner y sont de chattels reals & personals: Sicome lease soit fait de certaine terres a deux homes pur teme de 20. ans, & quant ils sont de

Also as there be Tenants in Common of Lands and Tenements, &c. as aforesaid, In the same manner there be of chattels reals and personals. As if a Lease bee made of certaine lands to two men for terme of 20. yeares, and when they be of this possessed, the

ceo

ceo poſſeſſes un de les leſſees grant ceo q̃a luy affiert durant le terme a un auter, dõqs meſme celuy a que grãt eſt fait, et lauter tiendront et occupieront en common.

one of the leſſees grant that which to him belongeth to another during the terme, then hee to whom the grant is made, and the other ſhall hold and occupie in Common.

¶ *Grant ceo que a luy affiert.* The ſame law it is, if the one Leſſee in this caſe make a Leaſe of part of the terme, the ſecond Leſſee and the other are Tenants in Common as hath been ſaid in the Chapter of Joyntenants. The (&c.) in this Section implyeth other hereditaments whereof men may bee Tenants in Common, whereof ſufficient hath been ſaid before. Vid.Sect.315.

Section 320.

Item ſi deux ont joyntm̃t le gard de corps & de tre dun enfant deins age, et lun de eux granta a un auter ceo q̃ a luy affiert de m̃ le garde, donque le grantee et lauter que ne granta pas, averont et tiendront ceo en common, &c.

ALſo if two have joyntly the wardſhip of the body & lãd of an infant within age, & the one of them grant to another that which to himſelfe belongeth of the ſame ward, then the grantee, and the other which did not grant ſhal have and hold this in common, &c.

¶ HEreby it appeareth, that there may bee Tenants in Common as well of chattels reall entire, as wardſhip of the body, &c. as of chattels perſonal, as a Hawke or a Horſe. If two Tenants in common be of a Seigniory, and a Ward fall, they are Tenants in common of the wardſhip aſwel of the body as land. And ſo it is if the land it ſelfe eſcheat to them, they ſhall bee Tenants in common therof, and ſo it is of Parceners. 16.E.3.tit. Aid.

¶ *En common, &c.* Here (&c.) implyeth any other entire chattell. Vid.devant.Sect.315.

Sect. 321.

Eſ meſme le maner eſt de chateux perſonals: Sicome deux ont joyntment per done ou per achate un chival ou boefe, &c. et lun grant ceo que a luy affiert de meſme le chival ou boefe a un auter: Donqs le grãtee, & lauter que ne granta pas, averont et poſſideront tiels chateux perſonals en cõmon. Et en tiels caſes, ou diverſ perſons ont chateux reals ou perſonels en common et p̃ divers titles, ſi lun de eux morust, les auters q̃ ſurveſquont, navera ceo p̃ le ſur

IN the ſame manner it is of chattels perſonals. As if two have jointly by gift, or by buying a horſe or an oxe, &c. and the one grant that to him belongs of the ſame horſe or oxe to another, the grantee, and the other which did not grant, ſhall have and poſſeſſe ſuch chattels perſonals in common. And in ſuch caſes where divers perſons have chattels reall or perſonall in Common, and by divers titles, if the one of them dieth, the others which ſurvive ſhall not have this as Survivor, but the exe-

bivor, mes les executors celuy q̄ morust tiendront & occupieṫ ceo ovesq̄ eux que survesquont, sicome lour testator fist ou devoit en sa vie, &c. pur ceo q̄ lour titles & droits en ceo fueront severals, &c.

cutors of him which dieth shall hold and occupie this with them which survive as their testator did or ought to have done in his life time, &c. because that their titles and rights in this were severall, &c.

Vid. devant. Sect. 315. This is evident enough, and hereof sufficient hath been said before.

Sect. [illegible].322

¶ *Pur terme de ans, &c.* For one yeare, halfe a yeare, &c.

¶ *Lun occupie tout & mist lauter hors de possession.* These are words materially added, for albeit one Tenant in Common take the whole profits, the other have no remedie by Law against him, for the taking of the whole profits is no ejectment: But if he drive out of the land any of the cattell of the other Tenant in common, or not suffer him to enter or occupie the land, this is an ejectment or expulsion, whereupon hee may have an Ejectione firmæ for the one moitie, and recober damages for the entry, but not for the meane profits

¶ Ejectione firmæ *de la moity, &c.* Here by this and the other (&c.) in these two Sections, are to bee understood divers diversities betweene Actions which concerne right and interest, (as of Ejectione firmæ, Ejectment de gard, quare ejecit infra terminum of a Chattell reall upon an expulsion or ejectment) and Actions concerning the bare taking of the profits rising of the Land or doing of Trespasse upon the Land, as here by the examples do appeare, for the right is severall, and the taking of the profits in Common. The second diversity is betweene

21.E.4.11.22.43.E.3.24. 45.E.3.13.29.H.6.50 58. 8.H.6 17.19.H.6.57. 32.H.6.16.2.E.4.23. 14.E.4 8.18.E.4.30. 37.H.6 33.21.E.3 29. 12.Ass.28 47.E 3.22.b. 10.H.7.16.F.N.B.117.a. 17.E.2.Account.122.

CItē en le case avantdit, sicōe deux ont estat en common pur termin dās, &c. lun occupier tout, & mist lauter hors de possessiō & occupation, &c. dōqs celuy, q̄ est mise hors de occupatiō avera enders lauter briefe de eject. firmæ, de la moity, &c.

ALso in the case aforesaid, as if two have an estate in common for term of years, &c. the one occupy all & put the other out of possession & occupation, he which is put out of occupation shall have against the other a writ of *ejectione firm.* of the moity, &c.

Sect. 323.

CEām̄ le maner est lou deux teignont le gard des terres ou tenements durant le nonage dū enfant, si lun ousta lauter de son possessiō, il que est ouste avera briefe de Ejectment de gard de le moitie, &c. pur ceo q̄ ceux choses son chateux realx, & poyent estre apportions et severs, &c. Mes nul Action de Trespas, cestassavoir, Quare clausum suum fregit, & herbam suam, &c.

IN the same manner it is where two hold the wardship of lands or tenements during the nonage of an Infant, if the one oust the other of his possession, he which is ousted shal have a writ of *Ejectmēt de gard* of the moitie, &c. because that these things are chattels reals, and may be apportioned & severed, &c. but no Action of Trespas (*videlicet*) *Quare clausum suum fregit, & herbam suam &c. conculcavit, & con-*

con-

conculcavit & consumpsit, &c. & hujusmodi actiones, &c. lū ne poet aver envers lauter pur ē q̄ chescun de eux poet entrer et occupier ē cō mon, &c. per my & p tout, les Terres et tenements queux ils teignont ē common. Mes si deux sont possesses de chattels personals en commō per divers titles, sicome dun Chival, ou Boef, ou Vache, &c. si lun prent ceo tout a luy hors ō possession dauter, lauter nad nul aut̄ remedie mes de prender ceo de luy q̄ ad fait luy le tort, pur occupier en common, &c. quant il poet heier son temps, &c. En meſn̄ le manner est de chattels realx, que ne poyent estre severs, sicome en le case avantdit, que deux sōt possesse dun gard ō corps dun enfant deins age, si lun prent lenfant hors de possession dauter, lauter nad alcun remedie p alcun action per la ley, mes de prend lenfant hors de le possession daut̄ quaunt il veit son temps.

sumpsit, &c. & hujusmodi actiones, &c. the one cannot have against the other, for that each of thē may enter & occupy in cō mon, &c. *per my & per tout*, the Lands & Tenements which they hold in common. But if two be possessed of Chattells personalls in common by divers titles, as of a Horse, an Oxe or a Cowe, &c. if the one take the whole to himself out of the possession of the other, the other hath no other remedie but to take this from him who hath done to him the wrong to occupie in common, &c. whē he can see his time, &c. In the same manner it is of Chattels realls, which cannot be severed, as in the case aforesayd, where two bee possessed of the wardship of the body of an Infant within age, if the one taketh the Infant out of the possessiō of the other, the other hath no remedy by an action by the Law, but to take the Infant out of the possession of the other when he sees his time.

Chattels reals that are apportionable or severable, as Leases for yeares, wardship of lands, interest of tenemēts by Elegit, Statute merchant, Staple, &c. of lands and tenements, and Chattels reals entire, as wardship of the body, a villeine for yeares, &c. for if one tenant in common take away the Ward, or the Villeine, &c. the other hath no remedie by action, but he may take them againe. Another diversity is betweene Chattels reals and Chattels personals, for if one Tenant in Common take all the Chattels personals, the other hath no remedy by action, but hee may take them againe, and herein the like law is concerning Chattels reals entire, and Chattels personall for this purpose. But of Chattels entire, as of a sheep, horse, or any other entire Chattell, reall or personal, no survivor shall bee betweene them that hold them in Common: And Tenants in Common shall not joyne in an Ejectione firmæ, nor in a writ of Ejectment de gard, or a Quare ejecit infra terminum, &c. for that these Actions concern the right of lands which are severall. 10.H.4.Trespas.178. 11.H.4.5. 21.E.4.11.12.

If two Tenants in Common be of a Mannor, to the which Waife and stray doth belong, a stray doth happen, they are Tenants in Common of the same, & if the one doth take the stray, the other hath no remedy by action, but to take him againe. But if by prescriptiō the one is to have the first beast happening as a stray, & the other the second, there an action lyeth if the one take that which pertains to the other. 13.E.3.Briefe 674.

If two Tenants in Common be of a Dove house, and the one destroy the old doves, whereby the flight is wholly lost, the other tenant in common shall have an action of Trespasse, Quare vi & armis columbare le pl' fregit & ducentas columbas pretii 40. s. interfecit, per quod volatum columbaris sui totaliter amisit: For the whole flight is destroyed, and therefore he cannot in 47.E.3.22.b.

barre plead Tenancie in Common. And so it is if two Tenants in Common be of a Parke, and one destroyeth all the Deere, an Action of Trespasse lyeth.

4.E.2.Trespas 233.
(c) 2.H.5.1. 2.H.5.3.

(c) If two Tenants in Common be of Land and of Mere stones, pro metis & bundis, and the one take them up & carry them away, the other shall have an action of Trespasse Quare vi & armis against him, in like manner as he shall have for destruction of Doves.

(d)13.E.3.Trespas 212.
19.R.2.Br.927.11.E.3.
Trespas 212.Vi.18.H.6.5.

(d) If two Tenants in Common be of a Folding, and the one of them disturbe the other to erect Hurdles, he shall have an action of Trespasse Quare vi & armis, for this disturbance.

(e)13.H.6.26.

(e) If two severall owners of houses have a river in common between them, if one of them corrupt the river the other shall have an action upon his case.

(f)F.N.B.127.Reg.163.

(f) If two Tenants in common, or Joyntenants be of an house or mill, and it fall in decay, and the one is willing to repaire the same, and the other will not, he that is willing shall have a writ de reparatione facienda, and the writ saith, Ad reparationem & sustentationem ejusdem domus teneantur, whereby it appeareth that owners are in that case bound pro bono publico to maintaine houses and mils which are for habitation and use of men.

17.E.2.tit.Account 22.
8.E.2.Account 115.
30.E.1.Account 127. 45.
E.3.19.47.E.3.22.b. 38.
E.3.22.E.3.23.E.3.
27.39.E. 278.F.N.B.
118.1.10.H.7.16.
2.E.4.25.

If one Joyntenant or Tenant in Common of Land maketh his Companion his Baylife of his part, he shall have an action of Account against him, as hath beene said. But although one Tenant in common or Jointenant without being made Baylife take the whole profits, no action of Account lyeth against him, for in an action of Account he must charge him either as a Guardian, Baylife, or Receiver, as hath beene said before, which he cannot doe in this case, unlesse his companion constitue him his Baylife. And therefore all those bookes which affirme that an action of Account lyeth by one Tenant in Common or Joyntenant, against another, must bee intended when the one maketh the other his Baylife, for otherwise never his Baylife to render an account is a good plea.

v. 172. a3.

v. Doct. & Stud. D.1. Ch. 19 p. 64.

W.2.cap.23.

If there be two Tenants in Common of a Wood, Turbarie, Pischarie, or the like, and one of them doth waste against the will of his companion, his companion shall have an action of waste, & he that did the waste before judgement hath election either to take his part in certaintie by the Sheriffe & the oath of men, &c. or that hee grant, That from thencefoorth hee shall not do waste but according to his portion, &c. & if he make choice of a certaine place, then the place wasted shall be assigned to him. (g) But this extends not to Coparceners, because they were compellable to make partition by the Common Law: and this, as it is said, doth extend as well to Tenants in Common, and Jointenants for life, as to an estate of Inheritance. But if one Tenant in Common, or Jointenant of a dove house, destroy the whole flight of doves, no action of waste doth lie in that case upon the said Statute, * as some doe hold.

(g)27.H.8.13.21.E.3.29.
29.E.3.3.3.E.2.Waste.
35.F.N.B.59.d.F.N.B.
49.1.

* 47.E.3.22.
50.E.3.3.
10.E.4.3.22.H.6.42.
2.E.3.17.E.3.47.
18.E.4.27.28.E.3.4.

If lands be given to two, & to the heires of one of them, and the tenant for life doth waste, he that hath the inheritance shall have no action of waste by the statute of Gloucester, but upon the statute of W.2. he shall have an action of waste. And it is to bee knowne, that one Tenant in common may infeoffe his companion but not release, because the freehold is severall. Jointenants may release, but not infeoffe because the freehold is joynt, but coparceners may both enfeoffe and release, because their seisin to some intents is joynt, and to some severall.

Sect. 324.

¶ Item quant un home voile mẽter un feoffment fait a luy ou un done en le taile, ou un lease p̄ terme de vie dascun t̄res ou tenemẽts, la il dirra, p̄ force d̄ quel feoffm̄t. done ou leas il fuit seisie, &c. mes lou un voile plead un leas ou grant fait a luy d̄ chattel real ou personal, la il dirra, per force de quel il fuit possesse, &c.

ALso when a man will shew a Feoffement made to him, or a gift in taile, or a lease for life of any lands or tenemẽts, there he shal say, by force of which feoffement, gift, or lease, he was seised, &c. but where one will pleade a lease or grant made to him of a chattel reall or personall, then he shal say, by force of wch he was possessed, &c.

¶ Pluis serra dit de tenants en common en le chapter de Releases, et tenant per Elegit.

More shall be said of tenants in Common, in the Chapters of releases and Tenant by *Elegit*.

¶ *Il fuit seisie, &c.* Seisie is a word of art, and in pleading is onely applyed to a Freehold at least, as Possesse for distinction sake is to a Chattell reall or personall.

As

As if B. plead a feoffment in fee, he concludeth, Virtute cujus predict' B. fuit ſeiſitus,&c. But if he plead a leaſe for yeares,he pleadeth, Virtute cujus predictus B. intravit,& fuit inde poſſeſſionatus, and ſo of Chattels perſonals, Virtute cujus fuit inde poſſeſſionatus.

And this holdeth not onely in caſe of Lands or Tenements which lie in livery, but alſo of Rents, Advowſons, Commons, &c. and other things that lie in grant, whereof a man hath an eſtate for life or inheritance.

Alſo when a man pleads a leaſe for life, or any higher eſtate which paſſeth by Livery,he is not to plead any entry, for he is in actuall ſeiſin by the livery it ſelfe. Otherwiſe it is of a leaſe for yeares, becauſe there he is not actually poſſeſſed untill an entry.

Chap. 5. Of Eſtates upon Condition. *Sect.* 325.

Eſtates, q̃ homes ount en terres ou tenemẽts ſur condition ſont d̃ deux maners, ſcilicet, ou ils ont eſtate ſur condition ẽ fait ou ſur condition ẽ ley, &c. Sur condition ẽ fait eſt, ſicome un home p̃ fait endent enfeoffa un auter ẽ fee ſimple, reſerbant a luy & a ſes heires annualment certaine rent payable a un feaſt, ou a diders feaſts p̃ an, ſur condition que ſi l'rent ſoit aderere, &c. q̃ bien liſt al feoffor & a ſes heires en meſmes les terres ou tenemẽts d̃ entr̃, &c. ou ſi terr̃ ſoit alie̅ a un home en fee rendãt a luy certaine rent, &c. & ſil happa q̃ le rent ſoit aderere per un ſennaign̄ apres aſc̃ jour d̃ payment de

EStates which men have in lands or tenements upon condition are of two ſorts, *viz.* either they have eſtate upon Condition in Deede, or upon Condition in Law, &c. upon Condition in Deed is, as if a man by Deed indented, enfeoffes another in fee ſimple, reſerving to him and his heires yearely a certaine rent payable at one feaſt or divers Feaſts *per annum*, on condition that if the Rent be behind, &c. that it ſhall bee lawfull for the Feoffor and his heires into the ſame Lands or Tenements to enter, &c. And if it happen the Rent to be behind by a weeke after any day of payment of it, or by a moneth after any day of payment of it, or by halfe a yeare, &c. that then it ſhall bee lawfull to the Feoffe̅

SUr Condition. Littleton having before ſpoke of eſtates abſolute, now begynneth to intreat of eſtates upon condition. And a condition annexed to the realtie whereof Littleton here ſpeaketh in the legall underſtanding eſt modus, a qualitie annexed by him that hath Eſtate, intereſt, or right to the ſame, whereby an Eſtate, &c. may either be defeated, or inlarged, or created upon an incertaine event. Conditio dicitur cum quid in caſum incertum qui poteſt tendere ad eſſe aut non eſſe confertur.

Glanvil. Lib. 10. cap. 8. Bract. lib. 2. ca. 5, 6, 7. & 8. lib. 4. fol. 213. Brit. cap. 36. & fo. 89. 99. 114. 130. 205, 206, 207, 249. Fleta lib. 3. cap. 9. & lib. 5. cap. 5. Mirr. ca. 2. Sect. 15. & 17.

¶ *Sur condition en fait, quæ eſt facti*, that is, upon a condition expreſſed by the partie in legall termes of Law.

¶ *Ou ſur. Condition en ley, &c.* quæ eſt juris, that is, tacitè created by Law without any words uſed by the partie. Againe, Littleton ſubdivideth Conditions in deed (though not in expreſſe words) into conditions precedent (of which it is ſaid, Conditio adimpleri debet priuſquam ſequatur effectus) and conditions ſubſequent. Againe, of conditions in deed, ſome bee affirmative, & ſome in the negative: and ſome in the affirmative, which imply a negative: ſome make the eſtate, whereunto they are annexed, voydable by entry or clayme, and ſome make the eſtate

Estate void ipso facto, without entry or claime.

Also of conditions in deed, some be annexed to the rent reserved out of the land, and some to collaterall acts, &c. some bee single, some in the conjunctive, some in the disjunctive, as shall evidently appeare in this Chapter, where the examples of these divisions shall be explained in their proper place.

Mir.cap.2.Sect.15. & 17.

¶ *En lev, &c.* Of conditions in Law more shal be said hereafter in this Chapter. *f.* 378.

¶ *Sur condition en fait, est sicome un home per fait indent, &c.* Here Littleton putteth one exãple of sixe severall kinds of conditions. That is, first, of a single condition in deed. Secondly, of a condition subsequent to the Estate, Thirdly, a condition annexed to the rent, &c. Fourthly, a condition that defeateth the estate. Fifthly, a condition that defeateth not the estate before an entry. And lastly, a condition in the affirmative, which implyeth a negative (as behind or unpaid implieth a negative) viz. not paid. All which doe appeare by the expresse words of Littleton.

ceo, ou per un mois apres ascun jour de payment de ceo, ou p un demy, &c. q̃ adonques bien lirroit a le feoffor & a les heires dentrer, &c. En ceux cases si le rent ne soit paie a tiel tẽps ou devant tiel tẽps limit & speciste deins le cõdition comprises en lẽdenture, dõqs poit l'feoffor ou ses heirs entrer en tiels terres ou tenements, & eux en son primer estate aver & tener, & de ceo ouste le feoffee tout net. Et est appelle estate sur condition pur ceo que le state le feoffee est defeasible si le condition ne soit performe, &c.

for and his heires to enter, &c. In these cases if the rent bee not payd at such time or before such time limited and specified within the Condition compriſed in the Indenture, then may the Feoffor or his heires enter into such Lands or Tenements, and them in his former estate to have and hold, and the Feoffee quite to ouste thereof. And it is called an estate upon Condition, because that the state of the Feoffee is defeasible if the Condition be not performed, &c.

¶ *Rend a luy certaine rent, &c.* Here by this (&c.) is implyed for life, in taile, or in fee.

¶ *Et en ceste case si le rent ne soit pay a tiel temps, &c. donques poet le feoffor ou ses heires entrer, &c.* By this Section, and by the (&c.) therein contained, sixe things are to be understood.

First, where our Author saith, Si le rent soit arere, that though the rent bee behind and not paid, (b) yet if the Feoffor doth not demand the same, &c. he shall never re-enter, because the land is the principall debtor, for the rent issueth out of the land, & in an Assise for the rent the land shall be put in view, and if the land be evicted by a title paramount, the rent is avoyded, and after such eviction the person of the feoffee shall not bee charged therewith, for the person of the feoffee was only charged with the rent in respect of the grant out of the land.

(b) 40.Ass 11.20 H. 6.30. 31.6.H.7.7.19.H 6.76. 20.H.6 32.22.H.6.46. Pl.Com.Kidwelys case. fol.70.& Hill.& Granges case fol.73.

Secondly, the demand must bee made upon the land, because the land is the debtor, and that is the place of demand appointed by Law.

If the King maketh a lease for yeares, rendring a rent payable at his receipt at Westminster, and after the King granteth the Reversion to another, and his heires, the Grantee shall demand the rent upon the land, and not at the Kings Receipt at Westminster, for as the Law without expresse words doth appoint the Lessee in the Kings case to pay it at the Kings Receipt, so in case of a subject, the Law appoints the demand to be on the Land.

Lib.4.fol.72.73. Boroughes case.

Demand of rent nec. in for a poin. vpon to take adv. of a cond. entr. K. or L. may do it without demand. ibid.

If there be a house upon the same, hee must demand the rent at the house. And hee cannot demand it at the backe doore of the house, but at the fore doore, because the demand must ever bee made at the most notorious place. And it is not materiall whether any person bee there or no.

49.Ass.5.15.Eliz. Dy.329.

L. if he ried rates in ho house tho d doors be open. and Co. Ent. 15

(c) Bendl. es en. Tresp.4. & 5.Ph. & Mar.

Albeit the Feoffee be in the Hall, or other part of the house, yet the Feoffor need not (c) but come to the fore-doore, for that is the place appointed by Law, albeit the doore be open.

(d) If

(d) If the feoffment were made of a wood onely, the demand must be made at the gate of the wood, or at some high way leading through the wood, or other most notorious place. And if one place bee as notorious as another, the feoffor hath election to demand it at which hee will, and albeit the Feoffee be in some other part of the wood ready to pay the Rent, yet that shall not availe him. Et sic de similibus. (d) 15. Eliz. Dyer. 329.

Thirdly, And if the Feoffor demand it on the ground at a place which is not most notorious, as at the back doore of a house, &c. and in pleading the Feoffor alledge a demand of the Rent generally at the house, the Feoffee may traverse the demand, and upon the evidence it shall be found for him, for that it was a void demand.

Fourthly, If the Rent be reserved to be paid at any place from the Land, yet it is in Law a Rent, and the Feoffor must demand it at the place appointed by the parties, observing that which hath beene said before concerning the most notorious place. Lib. 4. Boroughes case. fol. 73. Pl. Com. 70.

Fiftly, And all this is to be understood when the Feoffee is absent, for if the Feoffee commeth to the Feoffor at any place upon any part of the ground at the day of payment, and offer his Rent, albeit they be not at the most notorious place, nor at the last instant, the Feoffor is bound to receive it, or else hee shall not take any advantage of any demand of the Rent for that day.

Sixtly, therefore the place of demand being now knowne, it is further to be known what time the Law hath appointed for the same. This partly appeareth by that which hath been last said. For albeit the last time of demand of the rent is such a convenient time before the Sun setting of the last day of payment, as the mony may be numbred and received, notwithstanding, if the tender bee made to him that is to receive it upon any part of the land at any time of the last day of payment, and he refuseth, the condition is saved for that time, for by the expresse reservation, the mony is to be paid on the day indefinitely, and convenient time before the last instant, is the uttermost time appointed by law, to the intent that then both parties should meete together, the one to demand and receive, and the other to pay it, so as the one should not prevent the other. But if the parties meet upon any part of the land whatsoever, on the same day, the tender shall save the Condition for ever for that time.

And if the reservation of the rent be (as here Littleton putteth the case) at certaine feasts, with condition that if it happen the rent to bee behind, by the space of a weeke after any day of payment, &c. In this case the feoffor needeth not demand it on the feast day, but the uttermost time for the demand is a convenient time (as hath beene said) before the last day of the weeke, unlesse before that the Feoffee meet the Feoffor upon the land, and tender the rent as is aforesaid. Lib. 5. fol. 114. Wades Case. Pl. Com. Hill. & Granges case 167. 172. 20. H. 6. 30. 31. 6. H. 7. 3.

If a rent be granted payable at a certaine day, and if it be behind, and demanded, that the Grantee shall distreine for it, In this case the Grantee need not demand it at the day, but if he demand it at any time after, he shall distreine for it, for the Grantee hath election in this case to demand it when he will to enable him to distreine. Mich. 40. & 41. Eliz. inter Stanly & Read. Lib. 7. fo. 28. Maundes Case.

¶ *Et eux en son primer estate aver, &c.* Regularly it is true, that hee that entreth for a condition broken shall be seised in his first estate, or of that estate which hee had at the time of the estate made upon condition, but yet this faileth in many cases. 8. H. 7. 7. b. Reg.

First in respect of impossibility. As if a man seised of lands in the right of his wife, maketh a feoffment in fee by deed indented, upon condition that the Feoffee should demise the land to the Feoffor for his life, &c. the husband dieth, the condition is broken, in this case the heire of the husband shall enter for the condition broken, but it is impossible for him to have the estate that the Feoffor had at the time of the Condition made: For therein he had but an estate in the right of his wife, which by the coverture was dissolved. And therefore when the heire hath entred for the condition broken, and defeated the Feoffment, his estate doth vanish, and presently the state is vested in the wife. 4. H. 6. 2. Lib. 8. fol. 43. 44. Whittinghams case. 5. H. 7. 6. 4.

2. In respect of Necessity. If Cesty que use after the Statute of R. 3. and before the Statute of 27. H. 8. had made a Feoffment in fee upon condition, and after had entred for the condition broken. In this case hee had but an use when the feoffment was made, but now he shall be seised of the whole state of the land. So that as in the former case, the Ancestor had somewhat at the making of the Condition, and the heire shall have nothing when he hath entred for the condition broken, so in this case the Feoffor had no estate or interest in the land at the time of the condition made, but a bare use, yet after his entry for the condition broken he shall be seised of the whole state in the land, and that also for necessity, for by the feoffment in fee of Cey que use, the whole estate and right was devested out of the Feoffees. And therefore of necessity the Feoffor must gaine the whole estate by his entry for the Condition broken.

Tenant in speciall taile hath issue, and his wife dieth, Tenant in taile maketh a feoffment in fee upon condition, the issue dieth, the condition is broken, the Feoffor re-enters, shee shall have

have but an estate for life, as tenant in taile apres possibility of issue extinct by the re-entry, and yet he had an estate taile at the time of the Feoffement, and that also for necessity.

2. In some cases the Feoffor by his re-entry shall be in his former estate, but not in respect of some collaterall qualities. As if Tenant by homage ancestrell maketh a Feoffement in fee upon Condition, & entreth upon the condition broken, it shall never be holden by Homage ancestrell againe. And so it is if a Copihold escheate and the Lord make a Feoffement in fee upon condition, and entreth for the condition broken. And the reason in both these cases is, for that the custome or prescription for the time is interrupted.

15.Ass.12. Lord and Tenant by fealty & rent, the Lord is in seisin of his rent, the Lord granteth his Seigniory to another and to his heires upon condition, the Tenant attorneth & payeth his rent to the Grantee, the condition is broken, the Lord distreyneth for his rent, and Reseous is made, he shall be in his former estate, and yet the former seisin shall not enable him to have an Assise without a new seisin.

8. H.7.7. If Tenant in taile make a Feoffment in fee upon condition, and dieth, the issue in taile within age doth enter for the condition broken, he shall be first in as Tenant in fee simple, as heire to his father, and consequently and instantly he shall be remitted. But if the heire be of full age, hee shall not be remitted, because he might have had his Formdon against the feoffee, and the entry for the Condition is his owne act. But more shall bee said hereof in his proper place in the chapter of Remitter.

2. H.6.4. If a man make a Feoffment in fee of blacke acre and white acre, upon condition, &c. and for breach thereof that he shall enter into black acre, this is good.

43.Ass.47.13.E.4.4. 2.H.5.7.b.39.Ass.15. 11.H.5.25.16.Ass.47. If Tenant for life make a Feoffment in fee upon condition, and entreth for the Condition broken, he shall be Tenant for life againe, but subject to a forfeiture, for the state is reduced, but the forfeiture is not purged.

Sect.326.

¶ ET meine le manner est si terres sont dones en le taile, ou lesses a terme de vie ou des ans, sur condition, &c.

IN the same manner it is, if lands be given in taile, or let for terme of life or of yeares, upon condition, &c.

¶ *Sur condition, &c.* This implyeth the severall kindes of conditions in Deed before specified.

Sect. 327.

Vid.Sect 332. 19.E. tit.barre 280. 19.R.2.done rent 10. Pl.Com.524. ¶ ET *la terre tener tanque ils soyent satisfies ou paies, de le rent aderere, &c.* By this it is implyed that if such a feoffment be made reserving

(b)20.E.3.tit.Coven.3. (b) (for example) 8. markes rent at the feast of Easter, with such a Condition as is aforesaid, the Feoffor at the feast day demands the rent, the feoffee payeth unto him 6. markes parcell of the rent, the Feoffor entreth into the lands, and taketh the profits towards satisfaction. Afterwards the Feoffee doth tender the two markes residue of the rent to the feoffor upon the land, who refuseth it. It

¶ MES lou feoffmẽt est fait de certaine terres reservant certain rent, &c. sur tiel condition, que si le rent soit aderere, q̃ bien lieroit al feoffor, & ses heires, dentrer, et la terre tener tanq̃ ils soient satisfies ou payes de le rent aderere, &c. En cest case si le rent soit aderer, & le feoffor ou ses heires enter, le

BUt where a feoffment is made of certaine lands reserving a certaine rent, &c. upon such condition that if the rent bee behind that it shall be lawfull for the feoffor & his heires to enter, and to hold the land untill he bee satisfied or payed the rent behinde, &c. In this case if the rent be behind, and the feoffor or his

feoffee

feoffee neſt pas exclude de ceo tout net, mes le feoffor avera & tiendra la terre et prendra ent les profits tanque il ſoit ſatisfie de le rent aderere, & quant il eſt ſatiſfie, donque poyet le feoffee re-entrer en meſm̃ la terr̃, & ceo tener come il tenoit adevãt. Car en tiel cas le feoffor avera la tre forſque en maner cõe pur un diſtres, tanque il ſoit ſatisfie d̃ le rent &c. cõment q̃ il prendre les profits en le meane temps a ſon uſe demeſne, &c.

heires enter, the feoffee is not altogether excluded from this, but the Feoffor ſhall have & hold the land, and thereof take the profits untill hee bee ſatisfied of the rent behinde, and when he is ſatisfied, then may the feoffee reenter into the ſame land, and hold it as hee held it before. For in this caſe the Feoffor ſhall have the land but in maner as for a diſtreſſe untill he bee ſatisfied of the rent, &c. though hee take the profits in the meane time to his owne uſe, &c.

hath beene adjudged that the Feoffee upon the refuſall may enter into the land, for when the Feoffor is ſatisfied either by preſcriptiõ of the profits, or by payment or tender and refuſall, or partly by the one, and partly by the other, the Feoffee may re-enter into the land. And this is within the words of Littleton, viz. (Untill he be ſatisfied.) And albeit the Feoffor had accepted part of his rent, yet hee may enter for the Condition broken, and retaine the land untill he be ſatisfied of the whole. All which is worthy of obſervation.

¶ *Et en tiel caſe le Feoffor avera la terre forſque en manner come un diſtreſſe tanque il ſoit ſatisfie de la rent, &c.* By this it appeareth that the Feoffor by his re-entry, gaineth no eſtate of freehold, but an intereſt by the agreement of the parties to take the profits in nature of a Diſtreſſe. And therefore if a man maketh a Leaſe for life, with a reſervation of a rent and ſuch a condition, if hee enter for the condition broken, and take the profits of the land Quouſque, &c. he ſhall not have an action of debt for the rent Arere, for that the freehold of the Leſſee doth continue, and therefore the booke (c) that ſeemeth to the contrary, is falſe printed, and the true caſe was of a Leaſe for yeares, as it appeareth afterwards in the ſame page of the leafe. (c) 20.E.3.fol.7.

But herein alſo a diverſity worthy the obſervation is implyed, viz. If a man make a leaſe for yeares, reſerving a rent with a condition that if the rent be behind, that the Leſſor ſhall re-enter, and take the profits untill thereof he be ſatisfied, there the profits ſhall bee counted as parcell of the ſatisfaction, and during the time that he ſo taketh the profits, he ſhall not have an action of debt for the rent, for the ſatisfaction whereof he taketh the profits. But if the condition be that he ſhall take the profits untill the Feoffor be ſatisfied or payd of the rent, without ſaying (thereof) or to the like effect, there the profits ſhall bee accounted no part of the ſatisfaction, but to haſten the Leſſee to pay it, and as Littleton here ſaith, that untill he be ſatisfied, he ſhall take the profits in the meane time to his owne uſe. 32.E.3.7. Vid. ſemblable 27.H.8.4.43.E.3.21. 31.Aſſ.Pl.26. Vid. le ſtatute de Merton c.6 and obſerve theſe words, Quod inde percipere poſſint duplicem valorem, &c. Et ca.7. without this word (Inde.)

Sect. 328.

¶ Item, divers parolx (enſ auters) y ſont, queux p vertue de eux meſmes font eſtates ſur condition, un eſt le parol Sub conditione: Sicome A. enfeoffa B. of cer-

ALſo divers words (amongſt others) there bee which by vertue of themſelves make eſtates upon condition, one is the word (*Sub condic.*) as if *A.* infeoffe *B*, of cer-

¶ HEre in this and the next two Sections Littleton doth put foure examples of words that make Conditions in Deede, and firſt, Sub Conditione. This is the moſt expreſſe and proper Condition in Deede, and therefore our Author beginneth with it.

¶ *Talem redditũ &c.* This

- Sub conditione. (c) Marie Dyer.138. 27.H.8.15.13.H.4.entr. Cong.57.29.Aſſ.7. 33.Aſſ.11.40.Aſſ.13. Bracton ubi ſupra. Fleta lib.4.cap.9. Brit.cap.36.& ubi ſupra.

Vid.Sect.325.

This (&c.) implyeth any other rent or ſum in groſſe, or any collaterall conditiõ whatſoever, either to bee perform̃ed by the Feoffee, (wherof our Author here putteth his caſe) or by the Feoffor, and extendeth to all kinds of Conditions in Deede, before ſpecified. 201. a.

De certaine terre, habendum & tenendum eidem B. & hæredibus ſuis, ſub conditione, quod idem B. & hæredes ſui ſolvant ſeu ſolvi faciant præfat' A. & hæredibus ſuis annuatim talem redditum, &c. **En ceſt caſe ſans aſcun pluis dire le Feoffee ad eſtate ſur condition.**

taine land, To have & to hold to the ſaid B. & his heires, upon condition that the ſaid B. and his heires do pay or cauſe to be payd to the aforeſaid A. and his heires, yearely ſuch a rent, &c. In this caſe without any more ſaying the feoffee hath an eſtate upon condition.

Sect. 329.

Proviſo Vid.Sect.328. Dier.28.H.8.fol.13. 27.H.8.fol.14,15. 13.H.4.Entre Cong.57. Seignior Cromwels caſe. Lib.2.fo.71,72.at large. 35.H.8.tit.condition. Br. Lib.8.89.Frances caſe. Br: Condic: y: 27: H8: 14.

¶ *Proviſo ſemper qd' B. ſolvat, &c.*

Our Author putteth his caſe where a Proviſo commeth alone. And ſo it is if a man by Indenture letteth Lands for yeares, provided alwaies, and it is covenanted and agreed between the ſaid Parties, That the Leſſee ſhould not alien, and it was adjudged that this was a condition by force of the Proviſo, and a covenant by force of the other words.

This word Proviſo ſhall be alſo taken as a limitation or qualification, as hereafter in his proper place ſhall be ſaid. And ſometime it ſhall amount to a Covenant. All which doe appeare by the authorities in the margent.*

For the (&c.) in this Section, explanation is made in the Section next before.

(*) 27.H.8.15. &c. Ita quod Flet. lib.4.cap.9. Bracton ubi ſupra. Britton ubi ſupra.

¶ *Ou fueront tiels,* Ita quod. This is the third condition in Deed, whereof our Author maketh mention.

¶ **Mais ſi les parols fueront tiels**, Proviſo ſemper quod prædict' B. ſolvat, ſeu ſolvi faciat præfato A. talem redditum, &c. **ou fueront tiels**, Ita quod prædict' B. ſolvat ſeu ſolvi faciat præfato A. talẽ redditum, &c. **En ceux caſes ſauns pluis dire, le Feoffee nad eſtate forſque ſur condition, iſſint que ſil ne performaſt le condition, le feoffor et ſes heires poyent entrer, &c.**

Alſo if the words were ſuch, Provided alwaies that the aforeſaid B. do pay or cauſe to be paid to the aforeſayd A. ſuch a rent, &c. Or theſe, So that the ſaid B. do pay or cauſe to be paid to the ſaid A. ſuch a rent, &c. In theſe caſes without more ſaying, the feoffee hath but an eſtate upon condition: So as if he doth not performe the condition, the Feoffor and his heires may enter, &c.

Sect. 330.

6.E.2.Entrie cong.65. 8.E.2.Aſſ.320.adjudged. Quod ſi contingat. Paſch.37.Eliz.Rot.254. inter Saver et Hares in com.banco.

¶ *Quod ſi contingat &c.*

This is the fourth condition in Deede ſet downe by our Author.

¶ *Denter, &c.* Hereby it is evident, That

¶ **Item auts parols ſont en un fait queux cauſont les tenements eſtre Conditionals. Sicõe ſur tiel feof-**

Alſo there bee other words in a Deede which cauſe the Tenements to be conditionall: As if upon ſuch feoffment

ment un Rent est reserve al Feoffor, &c. et puis soit mitte en le Fait cest parol, Quod si contingat redditum predict' arretro fore in parte vel in toto, quod tunc benè licebit a le Feoffor et a ses heires dentr̃, &c. ceo est un fait sur condition. +

a rent bee reserved to the feoffor, &c. and afterward this word is put into the Deede, that if it happen the aforesaid rent to bee behind in part or in all, that then it shall be lawfull for the feoffor & his heires to enter, &c. This is a Deede upon condition.

some words of themselves do make a Condition, and some other (whereof our Author here & in the next Section * putteth an example) do not of themselves make a condition without a conclusion and clause of re-entry: And many times (Si) makes a Condition, and sometimes a limitation, as hereafter shall bee said in this Chapter. * Vid. Sect. 331.

Ineſſe potest donationi modus, conditio, sive causa. * Scito quòd (ut) modus est, (si) conditio (quia) causa. 3. H. 6. 7. Si Fleta. l. b. 4. cap. 9. Br. lib. 4. fol. 213. b. * 4. Mar. Dyer. 138. b. Bract. ubi supra.

Conditio is explained before. Modus is at this day properly taken for a modification, limitation or qualification, for the which also the Law hath appointed apt words, and because Littleton speaketh of this also in the end of this Chapter, I will reserve this matter to its proper place, where the Reader shall perceive excellent matter of learning touching this point.

Causa, The cause or consideration of the Grant, and herein there is a diversity between a gift of lands, and a gift of an annuitie or such like. For example, If a man grant an annuity pro una acra terræ, in this case this word pro sheweth the cause of the Grant, and therefore amounteth to a condition, for if the acre of land be evicted by an elder title, the annuity shall cease for cessante causa, cessat effectus. Pro. 24. E. 3. 34.

And so if an annuity be granted pro decimis, &c. if the Grantee be unjustly disturbed of the tithes, the Annuity ceaseth. And so it is if an annuity be granted pro consilio, and the Grantee refuse to give counsell the annuity ceaseth. So if an annuity bee granted quod præstaret consilium, this makes the grant conditionall. 9 E. 4. 29. 32. E. 3. Annu. 30. 14. E. 4. 4. 15. E. 4. 2. b. 8. H. 6. 23. 5. E. 2. tit. An. 14. 41. E. 3. 19. 32. E. 1. Avowrie 242. 21. E. 4. 49. 22. E. 4. 28. 35. H. 6. 2. 10. E. 3. 44. 5. E. 2. 9. E. 4. 20. 15. E. 4. 3.

But if A. pro consilio impenso, &c. make a feoffment or a lease for life, of an acre, or pro una acra terræ, &c. albeit he denyeth Counsell, or that the acre be evicted, yet A. shall not re-enter, for in this case there ought to be legall words of condition or qualification, for the cause or consideration shall not avoid the state of the Feoffee, and the reason of this diversity is, for that the state of the land is executed, and the annuity executory.

And yet sometime in case of lands or tenements (Causa) shall make a Condition. As if a woman give lands to a man and his heires, causa matrimonii prælocuti, in this case if shee either marry the man or the man refuse to marry her, she shall have the land againe to her and to her heires. (c) But of the other side, if a man give land to a woman and to her heires, causa matrimonii prælocuti, though he marry her, or the woman refuse, hee shall not have the Lands againe, for it stands not with the modesty of women in this kind, to aske advice of learned Counsell, as the man may and ought: * And the rather, for that in the case of the woman she may averre the cause, (for the reason aforesaid) although it be not contained in the Deed, yea though the feoffement be made without Deed. Flet. li. 5. c. 34. 34. Ass. 1. 40. Ass. 13. (c) 5. E. 2. Cui in vita 34. tit. Condit. Br. 5. H. 4. 1. * 12. E. 1. 1. Feoffements & Faits 114. F. N. B. 205. L. Vid. Sect. 355.

If a man maketh a feoffment in fee, ad faciendum, or faciendo, or ea intentione, or ad effectum, or ad propositum, that the Feoffee shall doe or not doe such an act, none of these words make the state in the land conditionall, for in the judgement of law they are no words of condition, and so was it resolved, Hil. 18. Eliz. in Com. Banco, in the case of a common person, but in the case of the King the said or the like words doe create a Condition, and so it is in the case of a will of a common person, which case I my selfe heard and observed. Ad faciend. ea intentione &c. Dier. 138. 7. H. 4. 22. 31. H. 8. tit. Condition. 19. Br. Pl. Com. 142. 38. H. 6. 33. 36. 37. Doct. & Stud. li. 2. cap. 34. 27. H. 8. 18. 2. 32. E. 3. Breve. 291.

But for the avoyding of a lease for yeares, such precise words of condition are not so strictly required as in case of Freehold and Inheritance. (f) For if a man by Deed make a Lease of a mannor for years, in which there is a clause, (And the said Lessee shall continually dwell upon the capitall Messuage of the said Manor, upon paine of forfeiture of the said terme) these words amount to a Condition. (f) 7 E. 6. Dier. 79. 28. H. 8. Dier. 27. Sub pœna forisfacturæ.

And so it is if such a clause be in such a lease, Quod non licebit, to the Lessee, Dare, vendere, vel concedere statum, & sub pœna forisfacturæ, this amounts to make the lease for yeares defensible, and so was it adjudged in the Court of Common Pleas (g) in Queen Elizabeths time, and the reason of the Court was, That a lease for yeares was but a Contract, which may begin by word, and by word may be dissolved. Quod non licebit. 3. E. 6. Dier. 65. 66. 4. Mar. 138. (g) Hil. 40. El. Rot. 1610. inter Browne & Aver. Vid. Pl. Com. 143. Br. & Bestones case.

+ Besides these words cited in this section, yet an other writ in y case of K. or in a Lease Sect. will do make conditions, as Ad effect, ea intentione, ad solvendum. Rep. 10. fol. 42.

Sect. 331.

¶ Mes il eſt diverſity perẽter ceſt parol (ſi contingat, &c.) et les parols procheins avantdits. Car ceux parolx (Si contingat, &c.) ne valent riens a tiel condition, ſinon que il ad ceux parolx ſudſequents, que bñ liſt al feoffor et a ſes heires dentrer, ꝛc. Mes en les caſes avãtdits, il ne beſoigne per la Ley, de mitter tiel clauſe, (ſcilicet) que le Feoffor et ſes heyres poyent entrer, ꝛc. pur ceo que ils poyent faire ceo per force des parols avantdits, pur ceo q̃ ils impreignont a eux meſmes en Ley un condition, ſcilicet, que le Feoffor et ſes heires poyent entrer, ꝛc. Uncore il eſt communement uſe en touts tiels caſes avantdits, d̃ mitter les clauſes en les faits, ſcilicet, ſi le rent ſoit aderere, ꝛc. que bien lirroit a le Feoffor et a ſes heires dentre, ꝛc. Et ceo eſt bien fait, a cel intent pur declarer et expreſſer a les lays gents que ne ſont apprũſes en la Ley, de le manner et le condition de le ſeoffement, ꝛc. Sicome home ſeiſe de terre, leſſa meſme la terre a un auter per fait indent pur terme des ans rendãt a luy certain rẽt, il eſt uſe de mitter en le fait, que ſi le rent ſoit arere al jour de payment, ou per un ſemaigne, ou per un mois, ꝛc. que adonque bien lirroit al Leſſor a diſtrepñ, ꝛc. uncoꝰ le leſſor poit deſtreĩ de cõmon droit p̃ le rent arere, ꝛc. coment que tiels parols ne unque fueront miſes en le fait, ꝛc.

But there is a diverſity between this word, *Si contingat, &c.* and the words next aforeſaid, &c. for theſe words, *Si contingat, &c.* are nought worth to ſuch a condition, unleſſe it hath theſe words following, That it ſhall be lawfull for the Feoffor and his heires to enter, &c. but in the caſes aforeſaid, it is not neceſſary by the Law to put ſuch clauſe, *ſcilicet*, that the Feoffor and his heires may enter, &c. becauſe they may doe this by force of the words aforeſaid, for that they containe in themſelves a condition, *ſcilicet*, That the Feoffor and his heires may enter, &c. yet it is commonly uſed in all ſuch caſes aforeſaid, to put the clauſes in the Deeds, *ſcilicet*, if the Rent be behind, &c. that it ſhall be lawfull to the Feoffor and his heires to enter, &c. And this is well done, for this intent, to declare and expreſſe to the Common people who are not learned in the Law, of the manner and condition of the Feoffement, &c. As if a man ſeiſed of Land letteth the ſame Land to another by Deede indented for Terme of yeares, rendring to him a certaine Rent, it is uſed to bee put into the Deede, That if the Rent bee behind at the day of payment, or by the ſpace of a weeke or a moneth, &c. that then it ſhall be lawfull to the Leſſor to diſtreine, &c. yet the Leſſor may diſtreine of common right for the Rent behind, &c. though ſuch words were not put into the Deed, &c.

¶ *Ils*

¶ *Ils ne besoigne per la ley de mitter tiel clause. &c.* Quæ dubitationis causa tollendæ inseruntur, communem legem non lædunt. Et expressio eorum quæ tacite insunt, nihil operatur.

¶ *Per un moys, &c.* Here albeit the clause of distresse be added, that if the Rent be behind by the space of a weeke or a moneth, that the Lessor may distraine, yet he may distraine within the weeke or moneth, because a distresse is incident of common right to every rent service. And the words be in the affirmative, and therefore cannot restraine that which is incident of Common right.

The other (&c.) in this Section upon that which hath beene said are evident.

Sect. 332.

¶ Item si feoffment soit fait sur tiel condition, que si le feoffor paya al feoffee a certaine jour, &c. 40. l dargent, que adonque le feoffor poit reentrer, &c. en ceo cas le feoffee est appell tenant en morgage, que est autant adire en Francois come mortgage, & en Latin, mortuum vadium. Et il semble que la cause, pur que il est appelle morgage, est, pur ceo que il estoit en aweroust si le feoffor voyt payer, al jour limitte tiel summe ou non: & sil ne paya pas, donque le terre que il mitter en gage sur condition de payment de le money, est ale de luy a touts jours, & issint mort a luy sur condition, &c & sil paya le money, donqs est le gage mort quant a le Tenant, &c.

Item, if a feoffment be made upon such condition, that if the feoffor pay to the feoffee at a certaine day, &c. 40. pounds of money, that then the feoffor may reenter, &c. In this case the Feoffee is called tenant in morgage, which is as much to say in French, as mortgage, and in Latine *mortuum vadium*. And it seemeth that the cause why it is called mortgage, is, for that it is doubtfull whether the Feoffor wil pay at the day limited such summe or not, and if he doth not pay, then the Land which is put in pledge upon condition for the payment of the money, is taken from him for ever, and so dead to him upon condition, &c. And if he doth pay the money, then the pledge is dead as to the Tenant, &c.

Mortgage is derived (c) of two French words, viz. Mort, that is, mortuum, and Gage, that is, vadium, or pignus. And it is called in Latine mortuum vadium, or morgagium. Now it is called here Mortgage, or mortuum vadium, both for the reason here expressed by Littleton, as also to distinguish it from that which is called vivum vadium. Vivum autem dicitur vadium, quia nunquam moritur ex aliqua parte quod ex suis proventibus acquiratur. As if a man borrow a hundred pounds of another, and maketh an estate of Lands unto him, until he hath received the said summe of the issues and the profits of the Land, so as in this case neither money nor Land dyeth, or is lost, (whereof Littleton hath spoken (d) before in this Chapter) and therefore it is called Vivum vadium.

(c) Glanvil. lib. 10. cap. 8. & lib. 13. cap. 26. 27.

(d) Vide Sect. 327.

Sect. 333.

CItem sicome home poit faire feoffment en fee en Moztgage, issint home poit faire done en taile en Moztgage, & un leas pur terme de vie, ou pur terme des ans en Moztgage, & touts tiels tenants sont appels tenants en Moztgage, solonque les estates, que ils ont en la terre, &c.

ALso as a man may make a feoffment in fee in Mortgage, so a man may make a gift in Tayle in Morgage, and a Lease for terme of life, or for terme of yeares in Morgage. And all such tenants are called tenants in morgage according to the Estates which they have in the Land, &c.

This Section upon that which hath beene said needeth no further explication.

Sect. 334.

¶ *Que le feoffor payera a tiel jour, &c.* Albeit Conditions bee not favoured, yet they are not alwayes taken literally, but in this case the Law enableth the heire that was not named to performe the condition for foure causes.

First, because there is a day limited, so as the heire commeth within the time limited by the Condition, for otherwise he could not do it, as shall be said hereafter in this Chapter.

Secondly, for that the condition descends unto the heire, and therefore the Law that giveth him an interest in the condition, giveth him an ability to performe it.

Thirdly, for that the Feoffee doth receive no dammage or prejudice therby (all these reasons are expresly to bee collected out of the words of Littleton) And these things being observed,

Fourthly, the intent and true meaning of the Condition shall be performed. And where it is here said, that the heire may render al jour assesse, &c. herein is implyed, that

27.H.8.19 b. Lib.8.fol.21.Frances case

CItem si feoffmēt soit fait en moztgage sur condition que le feoffor payera tiel summe a tiel jour. &c. come est enter eux per lour fait endent accorde & limit, comēt que le feoffor mozust devāt le jour de payment &c. uncore si le heir le feoffor paya mesme le summe de mony a mesme le jour a le feoffee, ou tender a luy les deniers & le feoffee ceo refusa de receiver, donque poit heire entrer en l'terre, & uncore le condition est, que si le feoffour payera tiel summe a tiel jour, &c. nient feasant mention en le condition

ALso if a feoffmēt be made in morgage upon condition, that the Feoffor shall pay such a summe at such a day, &c. as is betweene them by their Deed indented agreed, and limited, although the Feoffor dyeth before the day of paiment, &c. yet if the heire of the Feoffor pay the same summe of money at the same day to the Feoffee, or tender to him the money, and the Feoffee refuse to receive it, Then may the heire enter into the Land, and yet the condition is, that if the Feoffor shall pay such a summe at such a day, &c. not making men-

Dascun

dascun payment dest fait per son heire, mes pur ceo que le heire ad interesse de droit en le condition, &c. & lentent fuit forsque que les deniers serront paies al jour assesse, &c. & le feoffee nad pluis dãmage, si il soit pay per heire, que sil fuit pay per le pier, &c. Et pur cest cause, si le heire paya les deniers, ou tendera les deniers a le jour assesse, &c. & lauter ceo refusa il poet entrer, &c. Mes si un estrãge de sa teste demesne, que nad ascun interesse, &c. voile tender les avantdits deniers al feoffee a le jour assesse, le feoffee nest pas tenus de ceo receiver.

tion in the condition of any paiment to be made by his heire, but for that the heire hath interest of right in the condition, &c. and the intent was but that the mony should be paid at the day assessed, &c. and the Feoffee hath no more losse if it be payd by the heire, than if it were payd by the Father, &c. therefore if the heire pay the mony or tender the money at the day limited, &c. and the other refuse it, he may enter, &c. But if a stranger of his own head, who hath not any interest, &c. will tender the aforesaid money to the Feoffee at the day appointed, the Feoffee is not bound to receive it.

the Executors or Administrators of the Mortgagee, or in default of them the Ordinary may also tender, as shall be said (f) hereafter in this Chapter. But what if the Condition had beene, if the Mortgagee or his heires dis pay, &c. and hee dyed before the day without heire, so as the condition became impossible, here it is to be observed, that where the condition becommeth impossible to be performed by the act of God, as by death, &c. the state of the Feoffee shall not be avoyded, as shall bee said hereafter in this Chapter. And therefore the Law here inableth the heire (of whom no mention was made in the Condition) to performe the Condition, lest the inheritance should bee lost, wherein divers diversities are worthy of observation.

(f) Vide Sect. 337.

First, betweene a Condition annexed to a state in lands or Tenements upon a feoffment, gift in tatle, &c. and a Condition of an Obligation, recognizance, or such like. (g) For if a Condition annexed to lands bee possible at the making of the Condition, and become impossible by the Act of God, yet the state of the feoffee, &c. shall not bee avoyded. As if a man maketh a feoffment in fee upon Condition, that the Feoffor shall within one yeare goe to the City of Paris about the affaires of the Feoffee, and presently after the Feoffor dyeth, so as it is impossible by the Act of God, that the Condition should be performed, yet the estate of the Feoffee is become absolute, for though the condition be subsequent to the state, yet there is a precedency before the re-entry, viz. the performance of the Condition. And if the Land should by construction of Law be taken from the Feoffee, this should worke a dammage to the Feoffee, for that the Condition is not performed which was made for his benefit. And it appeareth by Littleton, that it must not be to the dammage of the Feoffee, and so it is if the Feoffor shall appeare in such a Court the nert Tearme, and before the day the Feoffor dyeth, the Estate of the Feoffee is absolute. (h) But if a man be bound by Recognizance or Bond with Condition that he shall appeare the next Tearme in such a Court, and before the day the Conusee or Obligor dyeth, the Recognisance or Obligation is saved, & the reason of the diversity is, because the state of the land is executed and settled in the Feoffee, and cannot be redeemed back againe but by matter subsequent, viz. the performance of the condition. But the Bond or Recognisance is a thing in Action, and executory, whereof no advantage can be taken untill there be a default in the Obligor, and therefore in all cases where a Condition of a Bond, Recognisance, &c. is possible at the time of the making of the condition, & before the same can be performed, the condition becomes impossible by the act of God, or of the Law, or of the Obligee, &c. there the Obligation, &c. is saved. But if the Condition of a Bond, &c. be impossible at the time of the making of the condition, the obligation, &c. is single. And so it is in case of a feoffment in fee with a condition subsequent, that is impossible, the state of the Feoffee is absolute, but if the Condition precedent be impossible, no

(g) Pl. Com. 456. Wrothes case 14. H. 7. 3. 15. H. 7. 1. 14. E. 4. 3. 38. H. 6. 2. 3.

(h) 15. H. 7. 18. 31. H. 6. barre 60. 18. E. 4. 17. 9. Eliz. 262. Dyer lib. 5. 22. Laughters case. 38. H. 6. 2.

Fleta lib. 4. cap. 9 & Bracton & Brittonubi sup.

14.H.8.28. 10.H.7.22. 4.H.7.4. 8.E.4.1. 28.H.8.25. Lib.5.fo.22. Laughters case & 95. 39.E.3.5.17.H.6. Obligat.18.5.H.Dyer 22.

state or interest shall grow thereupon. And to illustrate these, by examples you shall understand. If a man be bound in an Obligation, &c. with condition that if the Obligor doe goe from the Church of St. Peter in Westmin. to the Church of S. Peter in Rome within three houres, that then the obligation shall be voyd. The condition is voyd and impossible, and the Obligation standeth good.

And so it is if a feoffment be made upon condition that the Feoffee shall goe as is aforesaid, the state of the Feoffee is absolute, and the condition impossible and voyd.

*Pl.Co.Fullers case 272.

* If a man make a lease for life, upon condition that if the Lessee goe to Rome as is aforesaid, that then he shall have a fee, the condition precedent is impossible and voyd, and therefore no fee simple can grow to the Lessee.

35.H.6.tit.Barre 262. 37.H.6.barre 60. 2.E.3.9. 9.Eliz.Dyer 262. 28.H.8.30.

If a man make a feoffment in fee upon condition that the Feoffee shall re-infeoffe him before such a day, and before the day the Feoffor disseise the Feoffee and hold him out by force untill the day be past, the state of the feoffee is absolute, for the Feoffor is the cause wherefore the condition cannot be performed, and therefore shall never take advantage for non performance thereof. (i) And so it is if A. be bound to B. that I.S. shall marry Jane G. before such a day, and before the day B. marry with Jane, he shall never take advantage of the bond, for that he himselfe is the meane that the condition could not be performed. And this is regularly true in all cases.

(i) 4.H.7.4. 30.H.8.Dyer 42. 11.H.4.57 in protection. 10.H.7.18.

But it is commonly holden (k) that if the condition of a Bond, &c. be against law, that the Bond it selfe is voyd.

(k) Vide Bracton, Britton, Fleta ubi supra. Bracton lib.3.fo.100. 2.H.4.9. 8.E.4.12.b. 3.E.4.2.& 3. 4.H.7.4.b. 10.H.7.22. 14.H.8.28. 42.E.3.6.23.

But herein the law distinguisheth betweene a condition against law for the doing of any act that is Malum in se, and a condition against law (that concerneth not any thing that is malum in se) but therefore is against Law, because it is either repugnant to the state, or against some Maxime or rule in law. And therefore the common opinion is to bee understood of conditions against Law for the doing of some act that is malum in se, and yet therein also the Law distinguisheth. As if a man be bound upon condition that he shall kill I.S. the bond is voyd.

2.H.4.9.

Pl.Com. Brownings case 133.

But if a man make a feoffment upon condition that the feoffee shall kill I.S. the estate is absolute, and the condition voyd.

If a man make a feoffment in fee, upon condition that he shall not alien, this condition is repugnant and against Law, and the state of the Feoffee is absolute (whereof more shall bee said in his proper place.) But if the Feoffee be bound in a bond, that the Feoffee or his heirs shall not alien, this is good, for he may notwithstanding alien if he will forfeit his bond that he himselfe hath made.

7.H.6.43.b. 21.H.6.33. 21.H.7.11. 21.H.7.30. 20.E.4.8. Pl.Com in Brownings case 133.a 27.H.8.

So it is if a man make a feoffment in fee, upon condition that the feoffee shall not take the profits of the land, this condition is repugnant and against law, and the state is absolute.

But a bond with a condition that a Feoffee shall not take the profits, is good. If a man be bound, with a condition to enfeoffe his wife, the condition is voyd and against Law, because it is against a maxime in Law, and yet the bond is good, but if he be bound to pay his wife money, that is good. Et sic de similibus, whereof there be plentifull Authorities in our books.

Vide Sect.325.

¶ *Tender les deniers al jour assesse, &c.* Note, hereby is implyed that albeit a convenient time before sun set be the last time given to the Feoffor to tender, yet if he tender it to the person of the mortgagee at any time of the day of payment, and he refuseth it, the condition is saved for that time.

¶ *Il poet enter, &c.* And so may his heire after his death.

¶ *Mes si estranger de sa teste demesne que nad alcun interesse, &c. voile tender les avantdits deniers al feoffee al jour assesse, le feoffee nest pas tenus de ceo receiver.* Note, by this period and the (&c.) it is implyed that if the mortgager dye, his heire within age of 14. yeares (the land being holden in Socage) the next of kinne to whom the land cannot descend being his Gardian in Socage, may tender in the name of the heire, because he hath an interest as gardian in socage. Also if the heire bee within age of 21. yeares, and the land is holden by Knights service, the Lord of whom the land is holden may make the tender for his interest which he shall have when the condition is performed, for these in respect of their interest are not accounted estrangers.

Vide Sect.401. Hill.28.Eliz.in Banco Regis inter Watkins & Astwicke pro terris in Com. Devon. 45.E.3.tit. Release 28. 32.E.1.tit. Annuity 51. 33.H.6.18.

But if the heire be an Ideot, of what age soever, any man may make the tender for him in respect of his absolute disability, and the Law in this case is grounded upon charity, and so in like cases.

¶ *Le Feoffee nest pas tenus de ceo receiver.* And note that Littleton saith, that hee is not bound to receive it at a strangers hand. But if any stranger in the name

36.H.6.tit.barre 166. 33.E.1.tit.Annuity 51. 33.E.3.judgement 254.

of

of the Mortgageor or his heire (without his consent or privity) tender the money, and the Mortgagee accepteth it: this is a good satisfaction, and the Mortgageor or his heire agreeing thereunto may re-enter into the land, Omnis ratihabitio retrotrahitur & mandato æquiparatur. But the Mortgageor or his heire may disagree thereunto if he will.

Sect. 335.

CEt memorandum que en tiel cas, lou tiel tender de le money est fait &c. & le feoffee ou receiver ceo refusa, per que le feoffor ou ses heires entront, &c. donque l'feoffee nad ascun remedy daver l'money per le cõmon ley, pur ceo que il serra tenu sa folly que il refusa le money quant un loyal tender de ceo fuit fait a luy.

AND be it remembred that in such case, where such tender of the money is made, &c. and the feoffee refuse to receive it, by which the feoffor or his heires enter, &c. then the feoffee hath no remedy by the cõmon law to have this money, because it shall be accounted his owne folly that he refused the money, when a lawfull tender of it was made unto him.

¶ *Tender de le money est fait, &c.* here is implyed at the due time and place according to the condition.

¶ *Entront, &c. viz.* into the lands or tenements.

¶ *Donque le feoffee nad ascun remedy daver le money per le common ley. &c.* And the reason is because the money is collaterall to the land, and the feoffee hath no remedy therefore. 4 mi v. 209. b. 8.E.2.tit.Ass.38. 31.Ass.32.

If an obligation of an hundred pound be made with condition for the payment of fifty pound at a day, & at the day the Obligor tender the money, and the Obligee refuseth the same, yet in action of debt upon the Obligation if the defendant plead the tender and refusall, he must also plead that he is yet ready to pay the money, & tender the same in Court. But if the Plaintife will not then receive it, but take issue upon the tender, and the same be found against him, he hath lost the money for ever. 22.H.6.39. 21.E.4.25. 22.E.3.5. Lib.9.fo.79. H.Peytoes case.

If a man be bound in 200. quarters of wheat for delivery of a 100. quarters, if the obligor tender at the day the 100. quarters, & he shall not plead uncore prist, because albeit it be the parcell of the condition, yet they be Bona peritura, and it is a charge for the obligor to keep them And the reason wherefore in the case of the obligation the summe mentioned in the condition is not lost by the tender and refusall, is not only for that it is a duty and parcel of the Obligation, and therefore is not lost by the tender and refusall but also for that the obligee hath remedy by Law for the same. And in this case, Liberata pecunia non liberat offerentem 4 8.E.2.tit.Ass.389.

But if a man make a single bond, or knowledge a statute or Recognisance, & afterwards made a defeasance for the payment of a lesser sum at a day, if the Obligor or Conusor tender the lesser summe at the day, & the Obligee or Conusee refuseth it, he shall never have any remedy by Law to recover it, because it is no parcell of the sum contained in the Obligation, Statute or Recognisance being contained in the defeasance made at the time or after the obligation, Statute, or Recognisance. And in this case in pleading of the tender and refusal the party shall not be driven to plead that he is yet ready to pay the same or to tender it in Court: neither hath the Obligee or Conusee any remedy by Law to recover the summe contained in the Defeasance. (o) And so it is if a man make an Obligation of 100. pound, with condition for the delivery of Corne or Timber, &c. or for the performance of an arbitrement, or the doing of any act, &c. This is collaterall to the Obligation, that is to say, is not parcell of it, & therefore a tender and refusall is a perpetuall barre. 7.H.4.18. 5.Mar.Dver 150. 21.E.4.25. 22.E.3.5. 31.H.6.2.b. 17.Ass.pl.2. 20.E.4.1.b. 9.H.6.16. 36.H.6.26. 15.E.4.1. 16.H.7.13. 18.E.3.53. 7.E.4.4.b. 19.H.8.12. 27.H.8.1.2. 22.H.6.39.tit.Abatement 11. 49.E.3.3.19.H.6.12. (o) Henry Peytoes case, ubi supra. 31.Ass.25. 11.H.4.33. 1.H.6.8. 1.E.4.17.E.4.3. Pl.Com.Fogassas case fo.6.

But if a man be bound to make a feoffment in fee to the Obligee, and he make a lease and a release to him and his heires, albeit this be a collaterall condition, yet is it well performed because this amounts in Law to a feoffment.

¶ *Money, moneta, Legalis moneta Anglia.* Lawfull money of England, either of Gold or Silver, is of two sorts, viz. the English money coyned by the Kings Lib.5.fo.114,115. Wades case Lib.9.fo.78.

authority, or forreine coyne by Proclamation made currant within the Realme. Coyne, cuna dicitur a cudendo, of coyning of money. In French, Coine signifieth a corner, because in ancient time mony was square with corners, as it is in some countries at this day. Some say that Coine dicitur a χοῖνος, id est, communis, quod sit omnibus rebus communis. Moneta dicitur a monendo, not only because he that hath it, is to be warned providently to use it, but also because Nota illa de authore & valore admonet. Pecunia dicitur a Pecu, beasts, Omnes enim veterum divitiæ in animalibus consistebant, and it appeareth that in Homers time there was no mony but exchange of cattle, &c.

Aristotle Lib.5.cap.8.

Nummus ἀπὸ τοῦ νόμου quia lege fit, non natura. Vide * the Statute of 9.H 5. of the noble, halfe noble, and farthing of gold, which is the fourth part of a noble, and that is 20. pence:

(*) 9.H.5.Stat.2.Cap.7.

Sect. 336.

¶ *Et sil faile de pair les deniers, &c.*

12.E.3.Condic.8.13.Ed.3.ibid.10. 12.Ass.5.

If a man make a feoffment of Lands, To have and to hold to him and his heires, upon condition, That if the Feoffee pay to the Feoffor at such a day twenty pounds, that then the Feoffee shall have the lands to him and his heires: if the condition had not proceeded further, it had beene void, for that the Feoffee had a Fee simple by the first words, and therefore the words subsequent are materially added, (And if he faile to pay the money, &c.)

Li.5.fo.96,97.Goodales case.

¶ *Le second Feoffee voile tender le summe des deniers, &c.*

Albeit the second Feoffee bee not named in the Condition, yet shall hee tender the summe, because hee is privy in estate, and in judgement of Law hath an estate and interest in the condition, (as Littleton here saith) for the salvation of his Tenancy, vi. Sect. 334. And note hee that hath interest in the condition on the one side, or in the land on the other may tender.

Li.5.fo.114,115. Wades case.

And it is to bee ob-

CItem si feoffinēt soit fait sur tiel condition, Que si le Feoffee paya al feoffor a tiel jour inter eux limit xx.l, adonques le Feoffee avera la Terre a luy & a ses heires, & sil faile de payer les deniers a le jour assesse, que adonque bien list a le Feoffor ou a ses heires dentrer, &c. & puis devant le jour assesse, le Feoffee vend la terre a un auter, & de ceo fait feoffment a luy, en cest case si l'second Feoffee voile tender le summe de les deniers a le jour assesse a le Feoffor, & le Feoffor ceo refusa, &c. donque le second Feoffee ad estate en la terre clerement sans condition. Et la cause est, pur ceo que le second feoffee avoit interest en l'condition pur salvation de son Tenancy. Et en cest case il semble que si le primer Feoffee apres tiel vender de la terre, voile tender l'mony a

ALso if a Feoffment be made on this condition, That if the Feoffee pay to the Feoffor at such a day between them limited, twenty pounds, thē the feoffee shal have the Land to him and to his heires, and if hee faile to pay the money at the day appointed, that then it shall be lawfull for the Feoffor or his Heires to enter, &c. and afterwards before the day appointed the feoffee sell the Land to another, and of this maketh a Feoffement to him, in this case if the second Feoffee wil tender the sum of mony at the day appointed, to the Feoffor, and the feoffor refuseth the same, &c. then the second Feoffee hath an estate in the land cleerely without condition. And the reason is, for that the second feoffee hath an interest in the cōdition for the safegard of his tenancy: and in this case it seemes that if the first feoffee after such sale of the land, wil tender the

le

le jour assesse, &c. a le feoffor, ceo serra assets bone pur salvation de estate de le second Feoffee, pur ceo que le prim Feoffee fuit privy a le condition, & issint le tender de alcun de eux deux est assets bon, &c.

money at the day appointed, &c. to the feoffor, this shall be good enough for the safegard of the estate of the second feoffee, because the first feoffee was privie to the condition, and so the tender of either of them two is good enough, &c.

served also, That the feoffee may tender any money that is currant within the Realme, albeit it be forreine coyne, so as it be currant by Act of Parliament, or by the Kings proclamation, as hath beene said.

¶ *Tender le summe.* The Feoffee may tender the money in purses or bags, without

Lord 1 cap. Rep. 5 fol. 115.

shewing or telling the same, for he doth that which he ought, viz. to bring the mony in purses or bagges, which is the usuall manner to carry mony in, and then it is the part of the party that is to receive it, to put it out and tell it.

¶ *A primer Feoffee.* Here it appeareth, that the first Feoffee may notwithstanding his feoffment, pay the money to the Feoffor, because he is party and privy to the Condition, and by his tender may save the estate of his Feoffee, which in all good dealing he ought to doe.

Sect. 337.

ITem si Feoffement soit fait sur condition, Que si le Feoffor paya certaine summe dargent al Feoffee, adonqs bien lirroit a Feoffor & a ses heirs dentrer: en cest case si le feoffor devie devant le payment fait, & lheire voile tender al feoffee les deniers, tiel tender est voyd, pur ceo que le temps deins quel ceo doit estre fait est passe, car quaunt le condition est, que si le feoffor paya les deniers al Feoffee, &c. ceo est tant adire, que si le feoffor durant sa vie paya les deniers al feoffee, &c. & quant le feoffor morust, don-

ALso if a feoffment bee made upon condition, That if the Feoffor pay a certaine summe of money to the feoffee, then it shall be lawfull to the feoffor and his heires to enter: in this case if the feoffor dye before the payment made, and the heire will tender to the Feoffee the money, such tender is void, because the time within which this ought to be done, is past. For when the condition is, That if the Feoffor pay the money to the Feoffee &c. this is as much to say, as if the Feoffor during his life pay the money to the feoffee, &c. and when the feof-

THis diversity is plaine and evident, & agreeth with our (a) Bookes, and yet somwhat shal be observed hereupon: for here it appeareth, That seeing no time is limited, the Law doth appoint the time, & that is, during the life of the Feoffor. wherein divers diversities are worthy the observation:

(a) 14.H.7.3 b. 15.H.7.1.

1

First, Betweene this case that Littleton here putteth of the condition of a Feoffment in fee for the payment of money where no time is limited, and the condition of a Bond for the payment of a summe of money where no time is limited: for in such a condition of a Bond the money is to be payd presently, that is, in convenient time. (b) And yet in case of a condition of a bond there is a diversity betweene a condition of an obligation, which concernes the doing of of a transitory act without limitation of any time, as payment of money, delivery of Charters, or the like, for there the condition is to bee performed presently, that is, in convenient time, and when by the condition of the Obligation the act that is to bee done

44.E.3 9. 33.H.6.45 & 48.b. 4.E.4.29. 9.E.4.22. 15.E.4.30. 21.E.4.38.b. 9.H.7.17.b. 10.H.7.15. 14.H.8.21.2.& 23.b.

(b) Lib.6 fo.30.31. Borthies case 33.H.6.47.48.

2

done to the Obligee is of his owne nature locall, for there the Obligor (no time being limited) hath time during his life, to performe it, as to make a Feoffment, &c. if the Obligee doth not hasten the same by request. In case where the condition of the Obligation is locall, there is also a diversity, when the concurrence of the Obligor and the Obligee is requisite, (as in the said case of the Feoffment) and when the Obligor may performe it in the absence of the Obligee, as to knowledge satisfaction in the Court of Kings Bench, *although the knowledge of satisfaction is locall, yet because he may doe it in the absence of the Obligee, he must doe it in convenient time, and hath not time during his life.

(*) Boothies case ubi supra.

3

4 Another diversity is, where the condition concerneth a transitory or locall act, and is to be performed to the Feoffee or Obligee, and where it is to be performed to a stranger: as if A. be bound to B. to pay ten pounds to C. A. tender to C. and he refuseth, the Bond is forfeited, as in this Section shall bee said more at large.

4

5 Another diversity is betweene a condition of an Obligation, and a condition upon a Feoffment, where the Act that is locall is to be done to a stranger, and where to the Obligee or Feoffor himselfe. As if one make a feoffment in fee, upon condition that the Feoffee shall infeoffe a stranger, & no time limited, the Feoffee shall not have time during his life to make the feoffment, for then he should take the profits in the meane time to his owne use, which the Estranger ought to have, and therefore he ought to make the feoffment as soon as conveniently he may, and so it is of the Condition of an Obligation. But if the condition be, That the Feoffee shall reinfeoffe the Feoffor, there the Feoffee hath time during his life, for the privity of the condition between them, unlesse he be hastened by request, as shall be said hereafter. 219. b. & 220. a.

Boothies case li.6.fo.31. Lib.7.fo.79.b. Seignior Cromwels case.44.E.3.9. 21.b.44.21. 2.E.4.3.4. 19.H.6.67.73.76. 4.E.4.4.b. 26.H.8.9.b.

5

6 Another diversity is, when the Obligor or feoffee is to enfeoffe a stranger, as hath bin said, and when a stranger is to infeoffe the feoffee or obligee: As if A. infeoffe B. of Black Acre, upon condition that if C. infeoffee B. of white Acre, A. shall re-enter, C. hath time during his life, if B doth not hasten it by request, and so of an Obligation.

6

7 But in some cases albeit the condition be collaterall, and is to be performed to the obligee, and no time limited, yet in respect of the nature of the thing, the Obligor shall not have time during his life to perform it. As if the condition of an Obligation be, to grant an annuity or yearly rent to the Obligee during his life, payable yearly at the feast of Easter, this annuity or yearly rent must be granted before Easter, or else the Obligee shall not have it at that feast during his life, & sic de similibus, and so was it resolved by the Judges (*) of the Common Pleas in the Argument of Andrews case, which I my selfe heard.

14.E.3.Det.138.li.2. fo.80. Seignior Cromwels case.

(*) Vid. Dyer 14.El.311.

8 Lastly, when the Obligor, Feoffor, or Feoffee is to doe a sole act or labour, as to goe to Rome,

ques le temps de le tender est passe. Mes auterment est lou un jour de payment est limit, & le feoffor devie devaunt le jour, donque poet le Heire tender les deniers come est avauntdit, pur ceo que le temps de le tender ne fuit passe per le mort del feoffor. Jury il semble que en tiel case lou le feoffor devy devant le jour de payment, si les Executors de le feoffor tendront les deniers al feoffee al jour de payment, cel tender est assets bon. Et si le feoffee ceo refuse, les heires de feoffor poient entrer, &c. Et le cause est, pur ceo que les Executors representont l'person lour Testator, &c.

for dyeth, then the time of the tender is past. But otherwise it is where a day of payment is limited, and the feoffor dye before the day, then may the heire tender the money as is aforesaid, for that the time of the tender was not past by the death of the Feoffor. Also it seemeth, that in such case where the Feoffor dieth before the day of payment, if the Executors of the Feoffor tender the money to the Feoffee at the day of payment, this tender is good enough, and if the Feoffee refuse it, the heires of the feoffor may enter, &c. And the reason is, for that the Executors represent the person of their Testator, &c.

Rome, Jerusalem, &c. In such and the like cases, the Obligor, Feoffor, or Feoffee hath time during his life, and cannot be hastened by request. And so it is if a stranger to the Obligation or Feoffment were to doe such an act, he hath time to doe it at any time during his life.

¶ *Si les executors del feoffor tendront, &c.* So as now it appeareth that either the heire of the Feoffor, or his Executors may (when a day is limited) pay the money, and so also may the Administrator of the Feoffor doe, if the Feoffor dye intestate, (f) and this may the Ordinary doe if there bee neither Executor nor Administrator, as hath beene said. Lib. 5. fol. 96. 97. Goodales case. (f) Vide Sect. 334.

¶ *Et le feoffee refuse, les heires del feoffor poient entrer, &c.* Nota a tender by the Executors or Administrators, and a refusall, doth give the heire of the Feoffor a title of entrie. And here by this (&c.) is a diversity implyed, when a tender and refusall shall give a third person title of entrie.

If a man be bound to A. in an Obligation with Condition to infeoffe B. (who is a meere stranger) before a day, the Obligor doth offer to enfeoffe B. and he refuseth, the Obligation is forfeit, for the Obligor hath taken upon him to enfeoffe him, and his refusall cannot satisfie the Condition, because no feoffment is made, but if the feoffment had beene by the condition to be made to the Obligee, or to any other for his benefit or behoofe, a tender & refusall shall save the Bond, because he himselfe upon the matter is the cause wherefore the condition could not be performed, and therefore shall not give himselfe cause of action. But if A. be bound to B. with Condition that C. shall enfeoffe D. In this case if C. tender, and D. refuse, the Obligation is saved, for the Obligor himselfe undertaketh to doe no act, but that a stranger shall infeoffe a stranger. And it is holden in Bookes, (h) that in this case it shall be intended, that the feoffment should be made for the benefit of the Obligee. Some to reconcile the Bookes seem to make a difference between an expresse refusall of the stranger, and a readinesse of the Obligor at the day and place to make performance, and the absence of the stranger: but that can make no difference. I take it rather to be the error of the Reporter, and the Records themselves are necessary to be seene, for the Law herein is, as it hath beene before declared. 33. H. 6. 16. 17. 36. H. 6. 8. 2. E. 4. 2. 3. 15. E. 4. 5. 6. 22. E. 4. 13. 32. E. 3. barre 264. 7. E. 3. 29. 9. H. 7 17. 10. H. 7. 14. b. 35. H. 8. Dyer 56. lib. 5. fol. 23. Lambes case. (h) 8. E. 4. 14. 2. E. 4. ubi supra.

If I enfeoffe one in fee upon condition to infeoffe I.S. and his heirs, the Feoffee tenders the feoffment to I.S. and he refuseth it, the Feoffor may re-enter, for by the expresse intent of the Condition, the Feoffee should not have and retaine any benefit or estate in the land, but as it were an instrument to convey over the land. 19. H. 6. 34

But in that case if the condition were to make a gift in taile to I.S. and he refuseth it, and a tender and refusall is made, there the Feoffor shall not re-enter, for that it was intended that the feoffee should have an estate in the Land. And so it is if a feoffment bee made upon Condition that the Feoffee shall grant a Rent charge to a stranger, if the Feoffee tender the grant and he refuseth, the Feoffor shal not re-enter, because the feoffee was to retain the land, which poynts are worthy of due observation. 2. E. 4. Entry conge. 25.

Herein the case of Littleton, when the executors make the tender, and the Feoffee refuseth, albeit the heire be a third person, yet is he no stranger, but he and the Executors also are privies in Law.

¶ *Le person del testator, &c.* This is to be understood concerning goods and chattels either in possession or in action, and the executor doth more actually represent the person of the Testator, than the heire doth the person of the Ancestor. For if a man bindeth himselfe, his Executors are bound though they be not named, but so it is not of the heire: Furthermore, here the Administrators and the Ordinary also are implyed, as before hath beene said. *sup. a'.*

Sect. 338.

¶ Et nota que en touts cases de condition de payment d certaine summe en grosse, touchant terres ou tenements, si loyall tender soit un

And note that in all cases of condition for payment of a certaine summe in grosse, touching lands or tenements, if lawfull tender be once re-

¶ This is to be understood, that he that ought to tender the money is of this discharged for ever to make any other tender, but if it were a duty before, though the feoffor enter by force of the condition, yet the debt or duty remayneth. As if A. borroweth a hundred Vide Sect. sequen.

hundred pound of B. and after morgageth land to B. upon condition for payment thereof. If A. tender the money to B. and hee refuseth it, A. may enter into the Land, and the land is freed for ever of the Condition, but yet the debt remaineth, and may be recouered by action of Debt. But if A. without any loane, debt, or duty preceding, infeoffe B. of land upon Condition for the payment of a hundred pounds to B. in nature of a gratuity or gift. In that case if he tender the hundred pound to him according to the Condition, and hee refuseth it, B. hath no remedy therefore, & so is our Author in this and his other cases of like nature to be understood.

foits refuse, celuy q̄ dussoit tender l' money est ō ceo assouth, & pleinm̄t discharge per touts temps apres.

fused, he which ought to tender the money is of this quite and fully discharged for ever afterwards.

v:207:a:

Sect. 339.

¶ *Piera tiel summe a tiel jour, &c.* Here is implyed that this payment ought to bee reall and not in shew or appearance. For if it bee agreed between the Feoffor and the Executors of the feoffee that the Feoffor shall pay to the Executors but part of the money, and that yet in appearance the whole summe shall be paid, and that the residue shall bee repaid, and accordingly at the day and place, the whole summe is paid, and after the residue is repaid, this is no performance of the Condition, for the state shall not be devested out of the heire which is a third person, without a true and effectuall payment, and not by a shadow or colour of payment, and the agreement precedent doth guide the payment subsequent.

18.E.4.fol.18.Lib.5.fol. 96.Goodales case. 19.H.6.54. 20.E.3.Account Pl.70.

And by this Section also it appeareth, that the Executors do more represent the person of the Testator, than the heir doth to the Auncestor, for though the Executor be not named, yet the

CItem si le feoffee en morgage, devant l' jour de payment que serroit fait a luy face ses executors & decie, & son heire enter en le terre come il devoit, &c. il semble en cest cas que le feoffor doit payer le money al jour assesse al executors, & nemy al heire le feoffee, pur ceo que le mony al commencemēt trenchast al feoffee en manner come un duty, & serra entendue que lestate fuit fait per cause de le prompter de le mony per le feoffee, ou pur cause dauter duty. Et pur ceo le payṁt ne serra fait al heire, come il semble. Mes les parols del condition payent estre tiels, que le payment serra fait al heire, come si le condition fuit, que si le feoffor paya al feoffee, ou a ses heires, tiel summe a tiel jour, &c. la apres

ALso if the Feoffee in morgage before the day of payment which should be made to him, makes his Executors and dye, and his heire entreth into the land as he ought, &c. It seemeth in this case that the Feoffour ought to pay the money at the day appointed to the Executors, and not to the heire of the Feoffee, because the money at the beginning trenched to the Feoffee in manner as a duty, and shall be intended that the estate was made by reason of the lending of the money by the Feoffee, or for some other duty, and therefore the payment shall not be made to the heire, as it seemeth, but the words of the Condition may be such, as the payment shal be made to the heire. As if the Condition were, that if the Feoffor pay to the Feoffee or to his heires such a summe at

la

la mort le feoffee ſil mourust devant le jour limit, le payment doit eſtre fait al heire al jour aſſeſſe, &c.

ſuch a day, &c. there after the death of the feoffee, if he dieth before the day limited, the payment ought to be made to the heire at the day appointed, &c.

Law appoints him to receiue the money, but ſo doth not the Law appoint the heire to receiue the money unleſſe he be named.

¶ *Doit eſtre fait al heire al jour aſſeſſe, &c.* And here it alſo appeareth that if the condition upon the morgage be to pay to the Morgagee or his heires the money, &c. and before the day of payment the Morgagee dyeth, the Feoffor cannot pay the mony to the Executors of the Morgagee: For Littleton ſaith that in this caſe the payment ought to be made to the heire. Et in hoc caſu deſignatio unius perſonæ eſt excluſio alterius, & expreſſum facit ceſſare tacitum. And the Law ſhall never ſeeke out a perſon, when the parties themſelves have appointed one. But if the condition be to pay the mony to the Feoffee, his heirs or Executors, then the Feoffor hath election to pay it either (m) to the heire or Executors.

Vid. Lib 5. fo. 96. Goodales caſe. Dier 2. Eliz. 181. 44. E. 3. 1. b.

(m) 12. E. 3. Condition 8. & 10.

If a man make a feoffment in fee upon condition that the Feoffee ſhall pay to the Feoffor, his heires or aſſignes 20. pound at ſuch a day, and before the day the feoffor make his executors & dyeth, the Feoffee may pay the ſame either to the heir or to the Executors, for they are his Aſſignes in Law to this intent. But if a man make a feoffment in fee upon condition, that if the feoffor pay to the feoffee his heires or aſſignes 20 pound before ſuch a feaſt, and before the feaſt the feoffee maketh his Executors and dyeth, the feoffor ought to pay the mony to the heire, and not to the Executors, for the Executors in this caſe are no aſſignees in Law, & the reaſon of this diverſity is this, for that in the firſt caſe the law muſt of neceſſity finde out Aſſignes, becauſe there cannot be any Aſſignes in deed, for the feoffor hath but a bare condition and no eſtate in the land which he can aſſigne over. But in the other caſe the Feoffee hath an eſtate in the land which he may aſſigne over, and where there may bee Aſſignees in Deed, the Law ſhall never ſeek out or appoint any aſſignes in Law. And albeit the Feoffee made no aſſignment of the eſtate, yet the executors cannot be aſſignees, becauſe aſſignes were only intended by the condition to be aſſignees of the eſtate, and ſo was it reſolved (*) Mich. 23. & 24. Eliz. by the two chiefe Juſtices in the Court of wards betweene Randall and Browne, which I obſerved.

27. H. 8. 2. 3. & 4. Ph. & Mar. 140. 2. (*) Mich. 23. & 24. Eliz. in Curia Wardorum, Inter Randall & Browne.

But if the condition be to pay the money to the Feoffee, his heires or aſſignes, and the Feoffee make a feoffment over, it is in the election of the feoffor to pay the mony to the firſt Feoffee or to the ſecond feoffee, and ſo if the firſt feoffee dyeth, the Feoffor may either pay the money to the heire of the firſt Feoffee or to the ſecond Feoffee, for the Law will not enforce the Feoffor to take knowledge of the ſecond feoffment, nor of the validity thereof, whether the ſame be effectuall or not, but at his pleaſure, and the firſt Feoffee and his heires are expreſſly named in the Condition.

Vide 2. Eliz. Dyer 181. Pl. Com. Chapmans caſe. 186. 188. Vid. Goodales caſe lib 5. fo. 96. 97. 17 Aſſ. pl. 2. Goodales caſe ubi ſupra.

Sect. 340.

CItem ſur tiel caſe de feoffment en Morgage, queſtiõ ad eſte demaunde en quel lieu le feoffour eſt tenus de tender les deniers a l'feoffee al jour aſſeſſe, &c. Et aſcuns ont dit, que ſur la terre iſſint tenus en Morgage pur ceo que l'cõdition eſt dependant ſur le tre. Et ont dit, q

ALſo upon ſuch caſe of feoffement in Morgage, a queſtion hath been demanded in what place the feoffor is bound to tender the money to the feoffee at the day appointed, &c. And ſome have ſaid, upon the land ſo holden in morgage, becauſe the condition is depending upon the land. And they

¶ *Item ſur tiel caſe de feoffment ou mortgage queſtiõ ad eſte demande, &c.* Here and inother places, that I may ſay once for all, where Littleton maketh a doubt, and ſetteth downe ſeverall opinions and the reaſons, he ever ſetteth down (*) the better opinion and his owne laſt, and ſo he doth here. (n) For at this day this doubt is ſettled, having beene oftentimes reſolved, that ſeeing the money

(*) Vid. Sect. 170. 302. 375. (n) 8. E. 4. 4. & 14. 11. H. 4. 62. 17. Aſſ. p. 2. 27. E. 3. 2. 21. H. 7. Keilway 74. 16. Eliz. Dyer 327. Lib 4. f. 73. in Boroughs caſe 21. E. 4. 6.

8.E.4.2.19.R.2.Dec.178.

3 W.R.87

(b) 2.E.4.3.

money is a summe in grosse and collaterall to the title of the land, that the Feoffor must tender the money to the person of the Feoffee according to the latter opinion, and it is not sufficient for him to tender it upon the land, otherwise it is of a rent that issueth out of the land. But if the condition of a Bond, or feoffement be to deliver twenty Quarters of wheat or twenty load of Timber or such like, the Obligor or Feoffor, is not bound to carry the same about, and seeke the Feoffee, but the Obligor or Feoffor before the day must goe to the Feoffee, and know where he will appoint to receive it, and there it must bee delivered. And so note a diversitie betweene money, and things ponderous, or of great weight. If the condition of a Bond or feoffment be to make a feoffement, there it is sufficient (b) for him to tender it upon the land, because the state must passe by Livery.

¶ *Deins le royalme Dengleterre.* For if he be out of the Realme of England, he is not bound to seeke him or to goe out of the Realme unto him. And for that the Feoffee is the cause that the Feoffor cannot tender the money, the Feoffor shall enter into the land, as if he had duly tendered it according to the condition.

¶ *Un especiall corporall service al feoffée.* This is a diversity betweene a Rent issuing out of Land, and a Corporall service issuing out of land, for it sufficeth (as hath beene

sil le feoffor, soit sur le terre la prest a paier la money al feoffee a le jour assesse, & le feoffee adonqs ne soit pas la, adonqs le feoffor est assouth, & excuse de paymēt de l'mony, pur ceo que nul default est en luy. Mes il semble a ascuns que la ley est contrary, & que default est en luy. Car il est tenus ō querer le feoffee sil soit adonqs en ascun auter lieu deins le Roialme de Engleterr̄. Come si home soit obligé en un obligation de 20. li. sur condition endorce sur mesm̄ lobligat̄, que sil paya a celuy a que lobligation est fait a tiel jour 10. li. adonque lobligation de 20. li. perdra sa force, & serra tenus per nul, en cest cas il covient a celuy que fist obligation de querer celuy a que lobligation est fait, sil soit deins Engleterre, & al jour assesse de tender a luy les dits 10. li autrement il forfeitera la summe de 20 li. compris deins l' obligation, &c. Et issint il semble en lauter cas, &c. Et coment que ascuns ont dit, que le condition est dependant sur la terre, uncore ceo ne prove q̄

have said that if the feoffor be upon the lād there ready to pay the money to the feoffee at the day set, & the feoffee be not then there, thē the feoffor is quit & excused of the payment of the money, for that no default is in him. But it seemeth to some that the law is contrary, and that default is in him, for he is bound to seeke the feoffee if he bee then in any other place within the Realm of England. As if a man be bound in an obligation of 20. pound upon condition endorsed upon the same obligation, that if he pay to him to whom the obligation is made at such a day 10. pound, then the obligation of 20. pound shall lose his force and bee holden for nothing. In this case it behooveth him that made the obligation to seek him to whō the obligatiō is made if he be in England, and at the day set to tender unto him the said 10. li. otherwise he shall forfeit the summe of 20. pound compriſed within the obligation, &c. And so it seemeth in the other case, &c. And albeit that some have

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le feasans de le condition destre performe, covient estre fait sur la terr̃, &c. nient plus que si le condition fuit que le Feoffor ferra a tiel jour, &c. un especiall corporall service al Feoffee, nient nosmant le lieu ou tiel corporall service serra fait, en tiel cas le feoffor doit faire tiel corporal service al jour limitte al Feoffee, en quecunqz lieu Dengleterre que le Feoffee est, sil voile aver advãtage de le condition, &c. Jssint il semble en lauter cas. Et il semble a eux que il serroit pluis properment dit, que lestate de la terre est dependant sur la condition, que adire, que le condition est dependãt sur la terre, &c. Sed quære, &c.

said that the condition is depending upon the land, yet this proves not that the making of the condition to bee performed, ought to bee made upon the land, &c. no more than if the condition were that the feoffor at such a day shall doe some speciall corporall service to the Feoffee, not naming the place where such corporall service shall be done. In this case the Feoffor ought to do such corporall service at the day limited to the Feoffee in what place soever of England that the Feoffee bee, if hee will have advantage of the condition, &c. so it seemeth in the other case. And it seemes to them that it shall bee more properly said, that the estate of the land is depending upon the condition, than to say that the condition is depending upon the land, &c. *Sed quære, &c.*

said) that the rent bee tendered upõ the land, out of which it issueth. But Homage or any other speicall corporall service must be done to the person of the Lord, and the Tenant ought by the law of conveniency to seeke him to whom the service is to bee done in any place within England. 21.E.3.10.20.H.6.31. 27.E.3.34.21.Ass.13. 7.E.4.4.21.E.4.17.20.E. Avow. 113.45.E.3.9. 46.E.3.Barre.216.

If a man be bound to pay twenty pound at any time during his life at a place certaine, the Obligor cãnot tender the money at the place when he will, for then the Obligee should bee bound to perpetual attendance, and therfore the obligor in respect of the incertainety of the time, must give the obligee notice that on such a day at the place limited, he will pay the money, & then the obligee must attend there to receive it: for if the obligor then & there tender the money, he shall save the penaltie of the Bond forever. Mich.22.& 23.Eliz.in Banke le Roy, which I my selfe heard & observed.19.Eliz.Dier.354. Lib.8.fol.92.in Francis case.

The same law it is if a man make a feoffmẽt infee upon condition, if the feoffor at any time during his life pay to the feoffee twenty poũd at such a place certain, that then, &c. In this case the Feoffor must 18.El.Dier.354.

give notice to the Feoffee when he will pay it, for without such notice, as is aforesaid the tender will not be sufficient. But in both these cases if at any time the Obligor or Feoffor meet the Obligee or Feoffee at the place, he may tender the money.

If A. be bound to B. with condition that C. shall enfeoffe D. on such a day. C. must give notice to D. thereof, and request him to be on the land at the day to receive the feoffment, and in that case he is bound to seek D. and to give him notice. 2.F.4.3.& 4.

¶ *De tender*, or Tendre, is a word common both to the English and French, in Latine Offerre, and in that sense, and with that Latine word it is alwaies used in the common Law. Vide Sect. 514. the tender of the halfe marke. And before, Sect 333.334.337.

Section 341.

HEre the diuersitie appeareth betweene a summe in grosse, and a rent issuing out of the land, as hath beene touched before. 210.b.

¶ *Uncore il poet eslier*, s. *de relinquisher son entry ou de aver un Assise.*

Here it appeareth, That if the condition be broken for non payment of the rent, yet if the Feoffor bringeth an Assise for the rent due at that time, he shal never enter for the condition broken, because he affirmeth the rent to have a continuance, and thereby wayveth the condition. And so it is if the rent had had a clause of Distresse annexed unto it, if the Feoffor had distrained for the rent, for non payment whereof the condition was broken, hee should never enter for the condition broken, but he may receive that rent, and acquite the same, and yet enter for the condition broken. But if he accept a rent due at a day after, hee shall not enter for the condition broken, because he thereby affirmeth the lease to have a continuance.

14.E.3. Entre congeable 45.14.Ass.11.45.Ass.5. 6.H.7.3.17.E.3.73. Pl.Com.133.22.H.6.57.

¶ MEs si feoffment ẽ fee soit fait reservant al feoffor un annual rent, & pur default de payment un re-entry &c. en cest case il ne besoigne le tenant a tẽder le rent, quaunt il est arere forsque sur le tre pur ceo que ceo est Rent issuant hors de la Terre, que est Rent secke. Car si le Feoffor soit seisie un foits ỏ cest rent, et puis il vient sur la terre, &c. & le rent luy soit denie, il poet aver Assise de Novel Disseisin, Car coment que il poet entre p cause de le condition enfreint, &c. uncore il poet eslier, s̃, de relinquisher son entry ou de aver un Assise, &c. Et issint est diversity quant al tender de le Rent que est issuant hors de la Terre, & del tender dauter summ̃ en grosse que ne passe issuant Hors dascun Terre.

BUt if a feoffement in fee bee made, reserving to the feoffor a yearly rent, & for default of payment a re-entry, &c. in this case the Tenant needeth not to tender the rent when it is behind, but upon the land, because this is a Rent issuing out of the Land, which is a Rent Secke. For if the feoffor bee seised once of this Rent, and after hee commeth upon the Land, &c. and the rent is denied him, he may have an Assise of *Novel Disseisin*: for albeit hee may enter by reason of the condition broken, &c. yet hee may choose either to relinquish his entry, or to have an Assise, &c. And so there is a diversity as to the tender of a rent which is issuing out of the land, and of the tender of another summe in Grosse, which is not issuing out of any Land.

Sect. 342.

ET pur ceo il serra bone & sure chose pur celuy que voet faire tiel feoffement en morgage, de mitter un especial lieu lou les deniers sront payes, & le pluis especiall que est mis,

ANd therefore it wil be a good & sure thing for him that will make such feoffment in morgage, to appoint an especial place where the money shall be payd, and the more speciall that it bee put, the

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le meliox eſt pur le feoffor. Sicome A. infeoffe B. a aver a luy & a ſes heires, ſur tiel condition, Que ſi A. paya a B. en le Feaſt de Saint Michael Larchangell procheine a venir, en Eſgliſe cathedrall de Paules en Londres, deins quater heures procheine devant le heure d̄ noone d̄ meſm̄ le feaſt a le Rood loft de le Rood de le North doore deins meſme le Eſgliſe, ou al tombe d̄ S. Erkenwald, ou al huis de tiel Chappell, ou a tiel piller, deins meſme Leſgliſe que adonque bien liſt al avantdit A. & a ſes heires dentrer, &c. en tiell caſe il ne beſoigne de querer le feoffee en auter lieu, ne deſtre en auter lieu, forſque en le lieu compriſe en lendenture, ne deſtre la pluis longe temps, que le temps ſpecifie en meſm̄ lendenture, pur tender ou payer le money a le feoffee, &c

better it is for the feoffor. As if A. infeoffe B. to have to him and to his heires, upon ſuch condition, That if A. pay to B. on the Feaſt of Saint *Michael* the Arch-Angell next comming, in the Cathedrall Church of Saint *Pauls* in London, within foure houres next before the houre of Noone of the ſame feaſt, at the Rood loft of the Rood of the North doore, within the ſame Church, or at the Tombe of Saint *Erkenwald*, or at the doore of ſuch a Chappell, or at ſuch a pillar within the ſame Church, that then it ſhall bee lawfull to the aforeſaid A. and his heires to enter, &c. In this caſe he needeth not to ſeek the Feoffee in an other place, nor to bee in any other place, but in the place compriſed in the Indenture, nor to bee there longer than the time ſpecified in the ſame Indenture, to tender or pay the money to the feoffee, &c.

HEre is good counſell and advice given, to ſet downe in Conveyances every thing in certainty and particularity, for Certainty is the mother of Quietneſſe and Repoſe, and Incertainty the cauſe of variance and contentions: and for obtaining of the one, and avoiding of the other, the beſt meane is, in all aſſurances to take counſell of learned & well experienced men, & not to truſt only without advice, to a Preſident. For as the rule is concerning the ſtate of a mans body, Nullum medicamentum eſt idem omnibus, ſo in the ſtate and aſſurance of a mans Lands, Nullum exemplum eſt idem omnibus.

¶ *Al Tombe de Saint Erkenwald, &c.* This Erkenwald was a younger ſonne of Anna King of the Eaſt Saxons, and was firſt Abbot of Cherſey in Surrey which hee had founded, and after Biſhop of London, a holy and devout man, and lyeth buryed in the South Ile, above the Quire in Saint Pauls Church, where the Tombe yet remaineth that Littleton ſpeaketh of in this place: he flouriſhed about the yeare of our Lord, 680.

The reſidue of this Section, and the (&c.) are evident.

Section 343.

ITem en tiel caſe lou le lieu de payment eſt limitte, le Feoffee neſt oblige de receiver le payment en nul auter lieu forſque en meſme le lieu iſſint

ALſo in ſuch caſe where the place of payment is limited, the Feoffee is not bound to receive the payment in any other place but in the ſame place ſo limited.

HEreby it appeareth that the place is but a Circumſtance. And therefore if the Obligee receiveth it at any other place, it is ſufficient, though he be not bound to receive it at any other place.

And so it is if the mony bee to be paid on such a feast, yet if the mony be tendred and received at any time before the day, it is sufficient.

limit. Mes uncore si il resceiust le payment en auter lieu, ceo est assets bone, & auxy fort pur le feoffor, sicome le receit ust este en mesme le lieu iſſint limit, &c.

But yet if hee doe receive the payment in another place, this is good enough, and as strong for the feoffor as if the receipt had beene in the same place so limited, &c.

Sect. 344.

THereupon are many diversities worthy of observation.

3.H.7.4.b.9.H.7.16. 11.H.7.20.21. 19.E.4.1.b. 47.E.3.24.22.E.4.24. 37.H.6.26.Li.9.fo.78. Peytoes case.

First, there is a diversitie, when the Condition is for payment of money: and when for the delivery of a Horse, a Robe, a Ring, or the like: for where it is for payment of money, there if the Feoffee or Obligee accept an Horse, &c. in satisfaction, this is good, but if the condition were for the deliverie of a horse, or robe, there albeit the obligee or feoffee accept money or any other thing for the Horse, &c. it is no performance of the condition.

12.H.4.23.

The like Law is, if the condition bee to acknowledge a Recognizance of twentie pounds, &c. if the Obligee or feoffee accept twenty pounds in satisfaction of the condition, it is not sufficient in Law, (*) but notwithstanding such acceptance, the condition is broken. And so it is of all other collaterall conditions, though the Obligee or Feoffee himselfe accept it.

(*) Peytoes case ubi supra

ITem en tiel case de feoffmēt en morgage, si le feoffor paya al feoffee un chival, ou hanap dargent, ou un annel dor, ou auter tiel chose en plein satisfaction del money, & lauter ceo receiust cō est assets boñ & auxy fort sicome il ust receive la summe del money, coment que le chival, ou l'aut chose ne fuit de vintisme part del value de sum de le money, pur ceo que lauter avoit ceo accept en pleine satisfaction.

ALso in the case of Feoffment in Morgage, if the feoffor payeth to the Feoffee a Horse or a Cup of Silver, or a Ring of Gold, or any such other thing in ful satisfaction of the mony, & the other receiveth it, this is good enough, and as strong as if he had received the summe of mony, though the horse or the other thing were not of the twentieth part of the value of the sum of mony, because that the other hath accepted it in ful satisfaction.

4.H.7.4.Dy.35.H.8.56. 27.H.8.1.

Secondly, in case when the condition is for payment of money, there is a diversity when the money is to be paid to the party, and when to an estranger: for when it is to bee paid to an estranger, there if the stanger accept an horse or any collaterall thing in satisfaction of the mony, it is no performance of the Condition, because the Condition in that case is strictly to be performed. But if the Condition be, that a stranger shall pay to the Obligee or Feoffee a summe of mony, there the Obligee or Feoffee may receive a horse, &c. in satisfaction.

Lib.5.fo.17. Pinnels case.

Thirdly, Where the condition is for payment of twenty pounds, the Obligor or Feoffor cannot at the time appointed pay a lesser summe in satisfaction of the whole, because it is apparent that a lesser summe of mony cannot be a satisfaction of a greater. But if the Obligee or Feoffee do at the day receive part, and thereof make an acquittance under his Seale in full satisfaction of the whole, it is sufficient, by reason the Deed amounteth to an acquittance of the whole. If the Obligor or Lessor pay a lesser summe either before the day, or at another place than is limited by the condition, and the Obligee or Feoffee receiveth it, this is a good satisfaction.

26.H.6.tit.Barre 37.

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Feoffor

30.E.3.23.

Fourthly, Not onely things in possession may be given in satisfaction, (whereof Littleton putteth his case) but also if the Obligee or Feoffee accept a Statute or a Bond in satisfaction of the money, it is a good satisfaction.

11.R.2.tit.Barre 343.

If the Obligor or Feoffor be bound by condition to pay an hundred Markes at a certaine day,

day, and at the day the parties doe account together, and for that the Feoffee or Obligee did owe twenty pound to the Obligor or Feoffor, that summe is allowed, and the residue of the hundred Markes payd. This is a good satisfaction, and yet the twenty pound was a Chose in action, and no payment was made thereof, but by way of retainer or discharge. 37.H.6.26.46.E.3.33. 34.H.6.17.12.H.8.2.b.

¶ *En pleine satisfaction.* Nota, In satisfaction, and in full satisfaction is all one.

Sect. 345.

¶ Item si hõe enfeoffa un auter sur condition, que il & ses heires rendront a un estrange home & a ses heires un annuel rent de 20. s. &c. & si il ou ses heires failont de payment de ceo, que adonques bien lirroit al feoffor & a ses heires de entrer, ceo est bon cõdition, & uncore en cest cas coment que tiel annuall payment est appelle en lendenture un annuall rent, ceo nest pas proprement rent. Car il serroit rent, il covient estre Rent service, ou rent charge, ou rent secke, & il nest ascun de eux. Car si lestrange fuit seisie d ceo, & puis il fuit a luy deme, il navera unque assise de ceo, pur ceo que il nest pas issuant hors dascun tenements & issint lestrange nad ascun remedie si tiel annual rent soit aderere ẽ cest cas, mes que le Feoffor ou ses heires poient entrer, &c. & uncore si le Feoffor ou ses

ALso if a man infeoffe an other upon Condition, that hee and his heires shall render to a stranger and to his heires a yearely rent of 20. shillings, &c. and if hee or his heires faile of payment thereof, that then it shall bee lawfull to the Feoffor and his heires to enter, this is a good Condition, and yet in this case, albeit such annuall payment be called in the Indenture a yearely rent, this is not properly a rent. For if it should bee a rent, it must bee Rent Service, Rent Charge, or a Rent Secke: & it is not any of these. For if the stranger were seised of this, and after it were denied him, hee shall never have an Assise of this, because that it is not issuing out of any Tenements, and so the stranger hath not any remedie if such yearely rent be behind in this case, but that the Feoffor or his heires may enter, &c. And yet if the Feoffor or his heires enter for default of pay-

¶ *Endront a un estrange home un annuel rent, &c.*

This reservation is meerly void (a) for the reasons hereafter in this Section alledged by Littleton, and also for that no Estate moveth from the stranger, and that he is not party to the Deed. (a) Lib.8.fol.70.71.

And albeit it bee a voyde reservation, and can be no rent, and the words of the Condition be, that if the feoffee or his heires faile of payment of it, (that is, of the annuall rent) that then, &c. yet it appeareth that the Condition is good, and annuall Rent shall bee taken for an annuall summe of money in grosse, and not in the proper signification thereof, viz. to bee a Rent issuing out of Land, which is to bee observed, that words in a Condition shall bee taken out of their proper sense, Ut res magis valeat quam pereat, and so in like cases it is holden (b) in our Bookes. (b) 6.E.2.entr.cong.55. recipere. 8.Ass.34.revertere.

But if A. bee seised of certaine lands, and A. and B. joyne in a Feoffement in fee reserving a rent to them both and their heires, and the Feoffee grant that it shall be lawfull for them and their heires to distreine for the

the rent, this is a good grant of a rent to the both, because hee is partie to the Deede, and the clause of distresse is a grant of the rent to A. and B. as it appeareth before in the Chapter of rents. But if B. had beene a stranger to the Deed, then B. had taken nothing. And upon this diversity are all the Bookes (c) which prima facie seeme to vary, reconciled.

heires entront pur default d payment, adonque tiel rent est ale a touts jours. Et issint tiel rent nest forsq; un peine assesse a le tenant & ses heires, que sils ne voilent payer ceo solõque la forme del Indenture, ils perdront lour terre per lentry del feoffor ou ses heires pur default d payment. Et en test cas il semble que le Feoffee & ses heirs doyent querer le estranger & heires sils sont dins Engleterre, pur ceo que nul lieu est limit lou le payment serra fait, & pur ceo que tiel rent nest pas issuant hors dascun terre, &c.

ment: then such rent is taken away for ever. And so such a rent is but as a paine set upon the tenant and his heires, that if they will not pay this according to the forme of the Indenture, they shall lose their land by the entry of the Feoffor or his heires for default of payment. And in this case it seemeth that the Feoffee and his heires ought to seeke the stranger and his heires if they bee within *England*, because there is no place limited where the payment shall bee made, and for that such rent is not issuing out of any land, &c.

(c) 18.E.2.Ass.381. 25 H.8 2.13.E.2.feoffments & faits 108. 21.Ass.p.31.

¶ *Car sil serra rent, il covient estre rent service, rent charge, ou rent secke, & il nest nul de eux.* This is a good Logicall argument à divisione, & argumentum à divisione est fortissimum in lege. (d) Littleton useth this argument elsewhere, where see more of this matter.

(d) Vide Sect.381.

¶ *Pur default de payment.* Note here, seeing it is but a summe in grosse, there need no demand of rent, for Littleton here saith, that the Feoffee ought to seeke the person of the stranger to pay him the summe of money, because it is a summe in grosse and not issuing out of the Land.

Sect. 346.

¶ *A Le feoffor, donor, &c. ou a lour heires.* Hereby it may seem that if a man make a Feoffement, Gift or Lease, that (omitting himselfe) hee may reserve a Rent to his heires. But Littleton is not so to be understood, his meaning is, that either the Feoffor, &c. may reserve the Rent to himselfe onely, or to himselfe and his heires. And yet it is holden (e) in our bookes, that a man may make a feoffment in fee reserving a Rent of forty shillings to the feoffor for terme of his life, and

(e) 5. E.3.27,28.

ET hic nota deux choses, Un est, que nul rent (q̃ proprement est dit rent) poit estre reserve sur ascun feoffment, done, ou leas forsque tantsolement al feoffor, ou al donor, ou al lessor, ou a lour heires, & en nul maner il poit estre reserve a ascun estrãge

AND here note two things, one is, That no rent (which is properly said a Rent) may be reserved upon any feoffment, gift, or lease, but onely to the Feoffor, or to the Donor, or to the Lessor, or to their heires, and in no manner it may bee reserved to any strange person. But if

person

perſon. Mes ſi deux joyntenants font un leas per fait endent, reſervant a un de eux un certaine annuall rent, ceo eſt aſſets bon a luy a q̄ le rent eſt reſerve, pur ceo q̄ il eſt privy a le leaſe a nemy eſtrange a le leas, &c.

two Jointenants make a Leaſe by Deede indented, reſerving to one of them a certain yearely Rent, this is good enough to him to whom the Rent is reſerved, for that hee is privie to the Leaſe and not a ſtranger to the Leaſe, &c.

after his deceaſe a pound of Compne to his heires, that this is good.

If a man make a Feoffement in fee reſerving a Rent to him or his heires, it is good (f) to him for terme of his life, and void to his heire. (f) Lib. 5. fol. 111. Mallories caſe.

¶ *Mes ſi deux Joyntenants font un leaſe per fait indent, &c.*

This caſe being by Deed indented, is evident, and it hath been touched before, but 5. E. 4. 4. a. 27. H. 8. 16. Vide Sect. 58.

if that two Joyntenants without a Deed indented make a Leaſe for life, reſerving a rent to one of them, it ſhall enure to them both in reſpect of the joynt reverſion. And ſo it is of a ſurrender to one of them, it ſhall enure to them both.

If two Joyntenants, the one for life, and the other in fee, joyne in a Leaſe for life, or a gift in taile reſerving a rent, the rent ſhall enure to them both, for if the particular eſtate determine, they ſhall be joyntenants againe in poſſeſſion. But if tenant for life, and hee in the reverſion joyn in a leaſe for life, or a gift in taile by Deed reſerving a rent, this ſhall enure to the Tenant for life onely, during his life, and after to him in the reverſion, for every one grants that which he may lawfully grant, and if at the common law they had made a feoffment in fee generally, the feoffee ſhould have holden of the Tenant for life during his life, and after of him in reverſion, and ſo it was holden (g) in the Kings Bench. Vide Sect. 58. (g) Mich. 36. & 37. Eliz.

Sect. 347.

CE ſecond choſe eſt que nul entrie, ou re-entry (que eſt tout un) poit eſtre reſerve, ne done a aſcun perſon forſq̄ tant ſolement al feoffor, ou al donor, ou al leſſor, ou a lour heires: & tiel re-entrie ne poyt eſtre grant a un auter perſon. Car ſi home leſſa terre a un auter pur terme de vie per Indenture, rendant al Leſſor, & a ſes heires certaine rent, & pur default de payment un re-entry, &c. ſi apres le leſſor per un fait grant a le reverſion de la terre a un auter en fee et le tenant a terme de vie atturna, &c. ſi le rent a-

THE ſecond thing is that no entry nor re-entry (which is all one) may be reſerved or given to any perſon, but only to the Feoffor, or to the Donor, or to the Leſſor, or to their heires, And ſuch re-entry cannot be given to any other perſon. For if a man letteth land to another for terme of life by indenture, rendring to the Leſſor and to his heires a certaine rent, and for default of payment, a re-entry, &c. If afterward the leſſor by a Deed granteth the reverſion of the land to another in fee, and the Tenant for terme of life attorne, &c. if the rent be

¶ *Que nul entrie, &c.* Here Littleton reciteth one of the Maxmes of of the Common law, & the reaſon hereof is, for avoyding of maintenance, ſuppreſſion of right, and ſtirring up of ſuites: and therefore nothing in action, entry, or re-entrie can bee granted over; for ſo under colour thereof, pretended titles might bee granted to great men, whereby right might bee troden downe, and the weake oppreſſed, which the common Law forbiddeth, as men to grāt before they be in poſſeſſion.

¶ *Par defaults*

fault de payment un re-entrie, &c. Hereupon is to bee collected divers diverſities, firſt, betweene a condition that requireth a re-entry, and a limitation that Ipſo facto determineth the eſtate without any entry. Of this firſt ſort no ſtranger, as Littleton ſaith, ſhall take any advantage, as hath beene ſaid. But of limitations it is otherwiſe. As if a man make a Leaſe Quouſque, that is, untill I.S. come from Rome, the Leſſor grant the reverſion over to a ſtranger. I.S. comes from Rome, the Grantee ſhall take advantage of it, and enter, becauſe the eſtate by the expreſſe limitation was determined.

pres ſoit aderete, le grantee de le reverſion poit diſtreiner pur le rent, pur ceo que le rent eſt incident a le reverſion, mes il ne poit entrer en la tre, & ouſte le tenant, ſi come l'leſſor puiſſoit, ou ſes heires, ſi le reverſion uſt eſte continue en eux, &c. Et en ceſt caſe lentry eſt tolle a touts temps. Car le grantee de le reverſion ne poit entrer, cauſa qua ſupra. Et le Leſſor, ne ſes heires ne poyent enter. Car ſi le Leſſor puiſſoit ent, donques il covient que il ſerroit en ſon primer eſtate, &c. & ceo ne poit eſtre, pur ceo que il ad alien de luy le reverſion.

after behinde, the grantee of a reverſion may diſtreyne for the rent, becauſe that the rent is incident to the reverſion, but he may not enter into the land, and ouſte the tenant, as the Leſſor might have done or his heires, if the reverſion had beene continued in them, &c. And in this caſe the entrie is taken away for ever, for the grantee of the reverſion cannot enter, *Cauſa qua ſupra.* And the leſſor nor his heirs cannot enter, for if the leſſor might enter, then hee ought to be in his former eſtate, &c. And this may not bee, becauſe hee hath aliened from him the reverſion.

Regiſt. 246. Pl.Com.27. 3.E.3 Formedon 68. F.N.B.201. Lib.10.fo.37. Mary Portingtons caſe.

So it is if a man make a Leaſe to a woman Quamdiu caſta vixerit, or if a man make a Leaſe for life to a widow, Si tam diu in pura viduitate viveret. So it is if a man make a Leaſe for a 100. yeares if the Leſſee live ſo long, the Leſſor grants over the reverſion, the Leſſee dies, the grantee may enter, cauſa qua ſupra.

2. Another diverſity is betweene a condition annexed to a freehold, and a condition annexed to a Leaſe for yeares.

Brooke tit. Condition in Abh. 11.H.7. Loppinion de Bromley. 10.E. 52. 10.Aſſ.Pl.24. Pl.Com.36. 11.H.7.17. 19.R.2. Done 10.

For if a man make a gift in taile or a Leaſe for life, upon condition, that if the Donee or Leſſee goeth not to Rome before ſuch a day, the gift or leaſe ſhall ceaſe or be void, the grantee of the reverſion ſhall never take advantage of this condition, becauſe the eſtate cannot ceaſe before an entry, but if the leaſe had been but for yeares, there the grantee ſhould have taken advantage of the like condition, becauſe the leaſe for yeares Ipſo facto, by the breach of the condition without any entry was void, for a Leaſe for yeares may begin without ceremony, and ſo may end without ceremony: but an eſtate of freehold cannot begin nor end without ceremony. And of a voyde thing an eſtranger may take benefit, but not of a voidable eſtate by entry.

Pl.Com.313.314. in Scolaſticaes caſe.

¶ *Al feoffor, ou al donor, &c. ou a lour heires, &c.* Here is to bee obſerved a diverſity between a reſervation of a rent and a re-entry, for (as it hath been ſaid) a rent cannot be reſerved to the heire of the Feoffor, but the heire may take advantage of a condition, which the feoffor could never do. As if I infeoffe another of an acre of ground, upon condition that if mine heire pay to the feoffee, &c. 20. ſhillings, that he and his heires ſhall re-enter, this condition is good, and if after my deceaſe my heire pay the 20. ſhillings, he ſhall re-enter, for he is privy in bloud, and enjoy the land as heire to me.

15.E.4.14.a.

21.H.7.18.a.

¶ *Forſque tant ſolement al Feoffor, &c. ou a lour heires.* Our Author ſpeaketh here of naturall perſons for an example, for if a Biſhop, Archdeacon, Parſon, Prebend, or any other body politicke or corporate, Eccleſiaſticall or Temporall make a leaſe, &c. upon condition, his ſucceſſor may enter for the condition broken, for they are privie in right.

And ſo if a man have a leaſe for yeares, and demiſe or grant the ſame upon condition, &c. and die, his executors or adminiſtrators ſhall enter for the condition broken, for they are privie in right, and repreſent the perſon of the dead.

(y) If Cesly que use had made a lease for years, &c. upon condition, the Feoffees should not enter for the condition broken, for they are privie in estate, but not privie in blood. (y) 27.H.8.1.

Another diversity is in case of a Lease for yeares, where the condition is that the Lease shall cease or be void, as is aforesaid, and where the condition is, that the Lessor shall re-enter, for there the Grantee, as Littleton saith, shall never take benefit of the condition.

And it is to be observed, that where the estate or lease is Ipso facto void by the condition or limitation, no acceptance of the rent after can make it to have a continuance: Otherwise it is of an estate or lease voydable by entry. *v.* 211. b. Pl. Com. Brownings case. 136.

Another diversity is betweene conditions in Deed, whereof sufficient hath been said before, and conditions in Law. As if a man make a lease for life, there is a condition in Law annexed unto it, that if the Lessee doth make a greater estate, &c. that then the Lessor may enter. Of this and the like conditions in Law, which doe give an entry to the Lessor, the Lessor himselfe and his heires shall not only take benefit of it, but also his Assignee and the Lord by Escheat, every one for the condition in Law broken in their owne time. Another diversity there is betweene the judgement of the Common law, whereof Littleton wrote, and the Law at this day by force of the Statute(*) of 32.H.8 cap.34 (a) For by the Common law no Grantee or Assignee of the reversion could (as hath beene said) take advantage of a re-entry by force of any condition. For at the Common law if a man had made a lease for life reserving a rent, &c. and if the rent be behind a re-entry, and the Lessor grant the reversion over, the grantee should take no benefit of the condition for the cause before rehearsed. But now by the said Statute of 32.H.8. the Grantee may take advantage thereof, and upon demand of the rent, and non-payment he may re-enter. By which act it is provided that as well every person which shall have any grant of the King of any reversion, &c. of any lands, &c. which pertained to Monasteries, &c. as also all other persons being Grantees or Assignees, &c. to or by any other person or persons, & their heires, executors, successors, and assignees shall have like advantage against the Lessees, &c. by entry for non-payment of the rent, or for doing of waste or other forfeiture, &c. as the said Lessors or Grantors themselves ought or might have had. Upon this act divers resolutions and judgements have beene given, which are necessary to be knowne. (*) 32.H.8 cap.34. in le preamble. (a) 26.H.6. tit. ent. con. 49.

1. That the said Statute is generall, viz. (b) that the Grantee of the reversion of every common person as well as of the King shall take advantage of conditions. (b) Pl. Com. Hill & Granges case. 175. 175.

2. That the Statute doth extend to Grants made by the Successors of the King, albeit the King be onely named in the act. M. 10. & 11. Eliz. 280. Dyer Ibid.

3. That where the Statute speaketh of Lessees, that the same doth not extend to gifts in taile. 14. Eliz. Dyer 309. Winters case.

4. That where the Statute speaks of Grantees and Assignees of the reversion, (d) that an assignee of part of the state of the reversion may take advantage of the condition. As if Lessee for life be, &c. and the reversion is granted for life, &c. So if Lessee for yeares, &c. bee, and the reversion is granted for yeares, the Grantee for years shall take benefit of the Condition in respect of this word (Executors) in the Act. (d) Pl. Com. Kidwellyes case. 69. Vid. Dyer Mich. 14 & 15 Eliz. 309. Vide 7. E. 3. 54. Simile adjudged in Com. Banco in the Lord Dyers time. P. 17. El. Mich. 14. & 15. El. Dyer. 309. adjudge Winters case.

5. That a Grantee of part of the reversion, shall not (e) take advantage of the Condition, as if the lease be of three acres reserving a rent upon condition, and the reversion is granted of two acres, the rent shall bee apportioned by the act of the parties, but the condition is destroyed, for that it is entire and against common right. (e) Lib. 5. fo. 54. Knights case. Winters case ubi supra, Knights case ubi supra.

6. That in the Kings case, the condition in that case is not destroyed, but remaines still in the King.

7. By act in law a condition may be apportioned in the case of a common person, as if a lease for years be made of two acres, one of the nature of Burrough English, the other at the common law, and the Lessor having issue two sonnes, dieth, each of them shall enter for the condition broken, and likewise a Condition shall be apportioned by the act and wrong of the Lessee, as hath been said in the Chapter of Rents. Lib. 4. fo. 123. Dumpers case.

8. If a Lease for life bee made, reserving a rent upon condition, &c. the Lessor levies a fine of the reversion, he is grantee or assignee of the reversion, but without atturnement hee shall not take advantage of the condition, for the makers of the Statute intended to have all necessary incidents observed, otherwise it might be mischievous to the Lessee. Resolved in Dukes case. Pasch. 20. Eliz. in Com. Banco. Mallories case. lib. 5. 112. b.

9. There is a diversity betweene a condition that is compulsary, and a power of Revocation that is voluntary: for a man that hath a power of revocation, may by his owne act extinguish his power of revocation in part, as by levying of a fine of part. and yet the power shall remaine for the residue, because it is in nature of a limitation and not of a condition, and so it was resolved (b) in the Earle of Shrewsburies case in the Court of wards, Pasch. 39. Eliz. and Mich. 40. & 41. Eliz. (b) 14. Eliz. Dyer 309

10. If the Lessor bargaine and sell the reversion by deed indented and inrolled, the Bargainee is not in the Per by the Bargainor, and yet hee is an Assignee within the Statute.

So

So if the Lessor grant the reversion in fee to the use of A. and his heires, A. is a sufficient Assignee within the Statute, because he comes in by the act and limitation of the partie, albeit he is in the Post, and the words of the Statute be, To or By, and they be Assignees to him, although they be not by him: but such as come in meerly by act in law, as the Lord of the Alleine, the Lord by Escheat, the Lord that entreth or claymeth for Mortmaine, or the like, shall not take benefit of this Statute.

Lib.5 fo.123. Mallories case. Lib.8.fo.92. Frances case.

11. If the Lessor in the case before bargaine & sell the reversion by Deed indented and inrolled, or if the Lessor make a feoffmeent in fee, & the Lessee re-enter, the Grantee or Feoffee shall not take any advantage of any Condition, without making notice to the Lessee.

And so was it resolved in Winters case, Mich.14. & 15.El. in Com.Banco, and of entimes since, Vide Dyer 309.

12. Albeit the whole words of the Statute be, for non-payment of the rent, or for doing of waste or other forfeiture, yet the Grantees or Assignees shall not take benefit of every forfeiture, by force of a condition, but only of such conditions as either are incident to the reversion, as Rent, or for the benefit of the state, as for not doing of wast, for keeping the houses in reparations, for making of Fences, scouring of Ditches, for preserving of woods, or such like, and not for the payment of any summe in Grosse, delivery of Corne, wood, or the like, so as other forfeiture shall bee taken for other forfeitures, like to those examples which were there put, (videlicet) of Payment of Rent, & not doing of Wast, which are for the benefit of the Reversion.

Sect. 348.

¶ *AL Seignior per voy de Escheat, &c.*

Note here it appeareth, That the Lord by Escheat shall distrein for the Rent, and yet the Rent was reserved to the Lessor and his heires, but both Assignees in Deed, and Assignees in Law shall have the rent, because the Rent being reserved of inheritance to him and his heirs, is incident to the reversion, and goeth with the same. But if the Rent were reserved to him & his Assignes, and the Lessor assigned over the reversion, & dyeth, the Assignee shall not have the Rent after his decease, because the Rent determined by his death, for that it was not reserved to him, his heires and Assignes.

19.E.3.Resceit 14.

Lit: Sec: 1:

¶ *Mes il ne poet entrer en la terre per force del Condition, &c.*

Hereby it appeareth that at the Common law neither assignes in deed, nor assignes in law could have taken the benefit of either entry or re-entry, by force of a condition.

¶ *Par ceo que il nest pas heire al Lessor, &c.*

(f) 21.H.7.18.17 Ass.20. 19.E.3.Gard.113.114. 18.Ass.pl.18.Lib.7.fol.7. The Earle of Bedfords case.

The Guardian in chivalrie or in Socage shall in the right of the heire take benefit of a Condition by entry or re-entry, by the Common Law, and so it is here implyed.

ITem si soyt Seignior & tenant, & le tenãt fait un tiel lease pur terme de vie, rendant a Lessor & a ses heirs tiel annuel rẽt, & pur default de payment un re-entry, &c. si apres le lessor morust sans heire durant la vie le Tenaunt a terme de vie, per que le reversion devient al Seignior per voy descheat, & puis le rent de le Tenaunt a terme de vie soit aderere, le seignior poet destreiner l'Tenaunt pur le Rent arere: mes il ne poet entrer en la terre per force del condition, &c. pur ceo que il nest pas heire al Lessor, &c.

ALso if Lord and Tenant bee, and the Tenant make a Lease for terme of life, rendring to the Lessor and his heyres such an annuall Rent, and for default of payment, a re-entry, &c. if after the Lessor dyeth without heire during the life of the Tenant for life, whereby the Reversion commeth to the Lord by way of Escheate, and after the rent of the tenant for life is behind, the Lord may distrein the tenant for the rent behind, but he may not enter into the land by force of the condition &c. because that hee is not heire to the Lessor, &c.

Sect. 349.

ITem ſi terre ſoit graunt a un home pur terme de deux ans ſur tiel condition, que ſil payeroyt al grantor deins les dits deux ans 40. Markes, adonques il averoit la terre a luy & a ſes heires, &c. en ceſt caſe ſi le Grantee enter per force de le Grant ſans aſcun liverie de ſeiſin fait a luy per le Grantor, & puis il paya al Grantor les 40. Markes deins les deux ans, uncore il nad riens en la terre forſque pur terme de deux ans, pur ceo que nul livery de Seiſin a luy fuit fait al commencement. Car ſil averoit franktenement & fee en ceſt caſe, pur ceo que il ad performe le condition donque il averoit franktenement per force del prime graunt, lou nul livery de Seiſin de ceo fuit fait, que ſeroit inconvenient, &c. Mes ſi le Grantor uſt fait livery de ſeiſin al Grantee per force de la Grant donque averoyt le Grantee le franktenement et le fee ſur meſme le condition.

ALſo if Land bee granted to a man for terme of two yeares, upon ſuch condition, That if hee ſhall pay to the Grantor within the ſaid two yeares forty Markes, then he ſhal have the Land to him and to his heires, &c. In this caſe if the Grantee enter by force of the Grant, without any liverie of Seiſin made unto him by the Grantor, and after he payeth the Grantor the forty Markes within the two yeares, yet he hath nothing in the Land but for terme of two yeares, becauſe no livery of Seiſin was made unto him at the beginning: for if hee ſhould have a freehold and fee in this caſe, becauſe he hath performed the condition, then he ſhould have a freehold by force of the firſt Grant, where no Liverie of Seiſin was made of this, which would bee inconvenient, &c. but if the Grantor had made Livery of Seiſin to the Grantee, by force of the grant, then ſhould the Grantee have the freehold and the fee upon the ſame condition.

THere ſixe things are to be obſerved: Firſt, Littleton here putteth an example of a condition precedent. Secondly, That ſuch a Condition which createth an eſtate may be made by Parol without Deed. Thirdly, That Livery of Seiſin in this caſe muſt be made before the Leſſee enter, (as Littleton here ſaith at the beginning) for after his entry, Livery made to him that is in poſſeſſion is voyd, as hath been ſaid. Fourthly, That if no Livery of Seiſin be made, that no Feeſimple doth paſſe, although the mony be paid. Fifthly, That it is inconvenient that the Fee ſimple ſhould paſſe in this caſe without livery of Seiſin Sixtly, That Argumentum ab inconvenienti, is forcible in Law, as often hath beene and ſhall bee obſerved. See more of this kind of condition in the Section next following. Vid. Sect. 60.

¶ *Et a ſes heires, &c.* Here (&c.) implyeth an eſtate in taile, or a Leaſe for life.

Section.

Section 350.

¶ *Ore il ad fee simple conditionell, &c.* The like is of an Estate in taple or for life. Many are of opinion against Littleton in this case, and their reason is, because the Fee simple is to commence upon a condition precedent, and therfore cannot passe untill the condition bee performed: And that here Littleton of a Condition precedent doth (before the performance thereof) make it subsequent: and for proofe of their opinion they avouch many successions of authorities that no Fee simple should passe before the Condition performed.

31 E. 1. tit. Feoffments & Fats 119. 31. E. 1. tit. Feoffements & Faits 119. A. letteth a Mannor to B. for terme of twenty years, and the Deede would, That after the terme of twenty yeares, that B. and his heirs should hold the said Mannor for ever by twelve pounds Rent, A. taketh a wife and dyeth before the term be past, the wife of A. demands Dower. And there Wayland chiefe Justice saith, That the Fee and the franktenement doth repose in the person of the Lessor untill the terme be past, for before that, the Condition is not performed, for if the Lessor had alienes the land before the end of the terme, B. should not recover by a Writ of Assise, and by the death of the Lessor the chiefe Lord should habe had the wardship

Item si terre soyt grant a un home pur ẽme de 5. ans, ꝑ condition, que sil pay al Grantor deins les deux primer ans 40. Markes, que adonque il averoit fee, ou autrement forsque pur terme de les v. ans, & liverie de Seisin est fait a luy per force de le graunt, ore il ad fee simple conditionell, &c. Et si en ceo case le Grauntee ne paia my al Grantor les 40. Markes deins les primers deux ans, donques immediate apres mesmes les deux ans passes, le fee & le franktenement est, & serra adiudge en le Grantor, pur ceo que le Grantor ne poet apres les dits deux ans maintenant enter sur le Grauntee, pur ceo que le Grauntee ad uncore tit̃ per trois ans daver & occupier la terre per force de ĩ̃ grant. Et issint pur ceo que le condition del part le Grantee est enfreint, & le Grauntor ne poet entrer, la Ley mitterat fee & le franktenement en le Grantor. Car si le Grantee ẽ ceste case fait wast donques apres le enfreinder de le condition, &c. & apres les

Also if Land be granted to a man for term of five yeares, upon condition, That if he pay to the Grantor within the two first yeares fortie Markes, that then he shall have fee, or otherwise but for terme of the five yeares, and livery of Seisin is made to him by force of the Grant, now he hath a fee simple conditionall, &c. And if in this case the Grauntee doe not pay to the Grantor the fortie Markes within the first 2. yeares, then immediately after the said two yeares past, the fee & the freehold is and shall bee adjudged in the Grantor, because that the Grantor cannot after the sayd two yeares presently enter upon the Grauntee, for that the Grauntee hath yet title by three yeares to have and occupie the Land by force of the same Grant. And so because that the condition of the part of the Grantee is broken, and the Grantor cannot enter, the Law will put the fee and the Freehold in the Grantor: for if the Grantee in this case makes Wast, then after the breach of the condition, &c. & after the two

deux

deux ans, le grantor avera son briefe de wast. Et ceo est bone proofe adonque que le reversion est en luy, &c.

yeares, the Grantor shall have his Writ of Waste. And this is a good proofe then that the reversion is in him, &c.

of the heire of the Lessor, and by judgement the wife recovered Dower, for the termor could not have fee, all which be the words of that Booke.

12.E.2.tit voucher 265. I. letteth lads to B. for eight years, and if the lessor pay not a hundred Marks to the Lessee at the end of the terme, that then he shall have fee: by the non-payment of the mony, the fee and franktenement accrueth to him, and before, the Lessee cannot be impleaded in a Præcipe, neither shall he bouch. 12.E.2.tit voucher 265.

(x) 7.E.3.10. I. letteth certaine lands to N. for the terme of ten yeares, rendring a hundred shillings by the yeare to him and his heirs, and granted by deed, that if he held the lands over to him and his heirs, that he should tender by the yeare twenty pounds, the Lessor during the terme brought an Action of debt for the rent. And there Herle Chiefe Justice of the Common Pleas giveth the rule, that during the terme the Lessee had but for yeares, and therefore the Action of Debt maintenable. (x) 7.E.3.10.Pl.Com. Sayes case 272.

(y) 44.E.3.tit.attaint.22. and 43.Ass.p.41. D. and A. infeoffe the two Plaintifes in the Assise, they let those lands to S. for terme of nine yeares, upon Condition, that if the plaintife in the Assise pay a hundred shillings to S. during the terme, that S. shall have it but for nine years, and if they pay it not, that S. shall have fee. S. continueth his estate by one yeare, and after granteth his estate to one H. which H. continueth his estate by two years, and granted the residue of the term to R. and within the term of nine yeares, the Plaintifes in the Assise pay the hundred shillings to S. R. continueth his possession after the terme, and infeoffeth D. which infeoffeth the Lord Furnivall, against whom and others without any claim or entry made by the Plaintifes, after the nine yeares ended, he brought his Assise, and after adjournment recovered. (y) 44.E.3.tit.attaint 22. & 43.Ass.p.41.

(z) 10.E.3.39.& 40. R. doth let certaine lands to I. for terme of twelve yeares, and in surety of his terme he maketh a Charter of the fee, upon condition, that if he be disturbed within the term, that he cannot hold the lands until the end of the term, that then he shall hold the lands to him and his heires for ever, and seisin was delivered upon the one Charter and the other, R. within the terme plowed and sowed the land, and tooke the profits against the will of I. and I. upon this disturbance had fee, and recovered in Assise. (z) 10.E.3.39.40. 10.Ass. 15.tit Ass.161. Pl.Com.Brownings case. 135.

6.R.2.tit. Quid juris clamat 20. If a Lease be made for a terme, upon condition, if the Lessee pay a certaine summe within the terme, that then he shall have fee, if he pay the mony he shall have the fee, but if before the day of payment the Lessor levieth a fine to another, the Lessee ought to attorn by protestation, and if he pay the mony, the Connsee shall have it, and the Connsee shall have the rent reserved until the day of payment, and if land be letten for terme of yeares, upon condition, that if the Lessee be ousted within the terme by the Lessor, that hee shall have fee, if he be ousted, he shall have fee by the Condition, and notwithstanding hee shall not have any Assise, but he must have possession after the ouster, and of this he shall have an Assise. 6.R.2.tit.quid juris clamat 20.

And generally the bookes (*) are cited that make a diversity between a Condition precedent and a Condition subsequent. (*) 15.H.7.1.2. 14.H.8.18.30.3.H.6.6.b.

And lastly, they cite Dyer, (a) 10. Eliz. 281. and in Say and Fullers case, Pl. Com. 272. the opinions of Dyer and Browne. (a) Dyer 10.Eliz.281. Pl.Com.272.

Notwithstanding all this there are those that defend the opinion of Littleton, both by reason and authority. By reason, for that by the rule of Law a livery of seisin must passe a present Freehold to some person, and cannot give a freehold in futuro, as it must doe in this case, if after livery of seisin made, the Freehold and inheritance should not passe presently, but expect until the condition be performed, and therefore if a lease for yeares be made to begin at Michaelmas, the remainder over to another in fee, if the Lessor make liverie of seisin before Michaelmas, the liverie is void, because if it should worke at all, it must take effect presently and cannot expect. Vide Litt. in the Chapter of Tenants for yeares.

Secondly, they say that when the Lessor makes livery to the Lessee, it cannot stand with any reason that against his owne livery of seisin a Freehold should remaine in the Lessor, seeing there is a person able to take it. But if a man by deed make a Lease for yeares, the remainder to the right heirs of I.S. and the Lessor make liverie to the Lessee secundum formam chartæ, this livery is voyd, because during the life of I.S. his right heire cannot take (for nemo est hæres viventis) and in that case the freehold shall not remaine in the Lessor, and expect the death of I.S. during the terme, for albeit I.S. dye during the terme, yet the remainder is void, because a livery of seisin cannot expect.

And they say further that seeing all the Bookes aforesaid prove that such a condition is good, and that the livery made to the Lessee is effectuall, by consequence the Freehold and Inheritance must passe presently, or not at all.

And it is not rare, say they, in our Bookes that words shall be transposed and marshalled so as the feoffment or grant may take effect. (b) As if a man in the moneth of February make a lease for yeares reserving a yearely rent payable at the feasts of Saint Michael the Archangell, and the Annunciation of our Lady, during the terme, the Law (in this case of reservation) shall make transposition of the Feasts, viz. at the Feasts of the Annunciation, & of Saint Michael the Archangel, that the rent may be payd yearely during the terme. And so it is (c) in case of a grant of an Annuity. And further they take a diversity in this case betweene a Lease for life, and a Lease for yeares. For in case of a Lease for life with such a condition to have fee, they agree that the fee simple passeth not before the performance of the condition, for that the livery may presently worke upon the freehold: but otherwise it is in the case of a Lease for years. Also they take a diversity betweene Inheritances that lie in grant and Inheritances that lie in livery. For they agree that if a man grant an Advowson for yeares, upon condition, that if the Grantee pay twenty shillings, &c. within the terme, that then he shall have fee, the grantee shall not have fee untill the condition be performed, Et sic de similibus. But otherwise it is where livery of seisin is requisite, and therefore if the King make such a Lease for yeares, upon such a condition, the fee simple shall not passe presently, because in that case no livery is made.

(b) Hill & Granges Pl. Com. 171.

(c) 10.E.3. Seignior Staffords case. lib.8.fo.74. Pl.Co. Nichols case 487.

They also make severall answers to the authorities before cited. For as to the case in 31.E.1. they say that either the case is misreported, or else the Law is against the judgement. For the Case is but this, that a man make a Lease of a Mannor to B. for twenty yeares, & that after the twenty yeares B. shall hold the Mannor to him and his heires by 12. pound rent, and (as it must be intended) maketh livery of seisin. In this case it is cleere (say they) that B. hath a fee simple Maintenant, for there is no Condition precedent in the case.

As for the case in 12.E.2. the case (as it is put in the Booke) is, that John de Marre made a Charter to John de Burford of Fee simple, and the same day it was covenanted between them that John de Burford should hold the same tenements for eight years, & if he did not pay a hundred Marks at the end of the term, that the land shall remaine to John de Burford, & his heirs. In which case, say they, there is direct repugnancy, for first the Charter of the fee simple was absolute, and after the same day it was covenanted between them, &c. this Covenant being made after the Charter, could neither alter the absolute Charter, nor upon a Condition precedent give him a Fee simple that had a Fee simple before.

Seignior Staffords case ubi supra.

To all the other Bookes, viz. 7.E.3. 10 E.3. 10. Ass. 44. E.3. 43. Ass. and 6.R.2. they say that being rightly understood, they are good Law, for in some of those Bookes, as namely in 10.E.3. 10 Ass &c. it appeareth that there was a charter made in surety of the term, which, say they, must be intended thus, viz. A man maketh a Lease for yeares, the Lessee enters & the Lessor makes a Charter to the Lessee, & thereby doth grant unto him, that if he pay unto the Lessor a hundred Marks during the term, that then he shall have and hold the Lands to him and to his heires.

In this case, say they, there need no livery of seisin, but doth enure as an executory grant by increasing of the state, and in that case, without question, the fee simple passeth not before the condition performed.

Pl.Com. in Nichols case 487.

And therefore Littleton warily putteth his case of an estate made all at one time by one conveyance, and a livery made thereupon.

For Littleton himself in the Section before saith, That in that case without a livery nothing passeth of the Freehold and Inheritance.

And this diversity (say they) is proved by Bookes, and thereupon they cite (d) 10.E.3.54. in a writ of Dower, the tenant vouched to warranty, the vouchee as to part pleaded that the husband was never seised of any estate whereof she might be endowed, as to the residue the Tenant pleaded that he lessed to the husband in gage upon Condition that if the Lessor paid ten Marks at a certain day, that he should re-enter, & if he failed of payment, that the Land should remaine to the husband and his heires, which must be intended to be done by one entire act, and pleaded that he payd the mony at the day, which is allowed to be a good plea, Ergo, the Fee simple passed by the Livery, otherwise the plea had amounted that the husband was never seised, &c. And, say they, it cannot bee intended that the Judges should bee of one opinion in Trinitie Terme, and of another opinion in Michaelmasse Terme in the same yeare, and therefore (they hold) their severall opintons are in respect of the sayd diversity of the cases.

(d) 10.E.3.54.

(e) 32.E.3.tit.garr.30. A tenant by the curtesie made a Lease for yeares, & in surety of the terme, &c. made a Charter in Fee simple, and made livery according to the Charter (note a speciall mention made of Livery in this case) and issue being taken in an Assise whether the

(e) 32.E.3.tit.garr.30.

Tenant

tenant by the courteſie demiſed in fee, upon the ſpeciall matter found, it was adjudged that a Fee ſimple paſſed, and that the heire might enter for a forfeiture, which ſay they, in caſe of Livery is an expreſſe judgement in the poynt agreeing with the opinion of Littleton.

(f) 43 E.3.35. in an Action of waſt againſt one in Lands which hee held for term of yeares, Belknap pleaded thus for the Defendant, that the Defendant was ſeiſed in fee, and infeoffed the Plaintife, &c. and after the Plaintife demiſed the Land back again to the Defendant for yeares upon condition, that if the defendant payd certain mony, &c. that then the Defendant might retaine the land to him and to his heires, and if not, the Plaintife might enter, &c. and pleaded that the terme endured, and that the day of payment was not come, & demanded judgment, if the Plaintife may maintaine an Action of waſt, inaſmuch as the defendant had now a fee ſimple, & ſhewed forth the Indenture of Leaſe with the condition (which agreeth with Littletons caſe) all being done at one time, and by one Deed, and a livery intended, and with Littletons opinion alſo. It is true, ſay they, that Cavendiſh accounſell with the Plaintife offered to demurre, but never proceeded, (g) Vide 20. Aſſ. pl. 20.

(f) 43.E.3.35.

(g) 20.Aſſ.pl.20.

Other authorities they cite, but theſe (as I take it) are the principall, and therefore for avoyding of tediouſneſſe, having I feare beene too long upon this point, the others I omit. Only this they adde, that Littleton had ſeene and conſidered of the ſaid Bookes, and have ſet downe his opinion where livery of ſeiſin is made upon a Conveyance made at one time, as hath beene ſayd, that he hath Fee ſimple conditionall.

Benigne lector utere tuo judicio, nihil enim impedio. Conditio beneficialis quæ ſtatum conſtruit benigne ſecundum verborum intentionem eſt interpretanda, odioſa autem quæ ſtatum deſtruit ſtricte ſecundum verborum proprietatem eſt accipienda. Lib.8.fo.90. Frances caſe.

A Leaſe is made to a man and a woman for their lives upon condition, that which of them two ſhall firſt marry, that one ſhall have fee, they entermarry, neither of them ſhall have fee, for the incertainty.

Note if the condition be to increaſe an eſtate (that is to ſay) to have fee upon payment of mony to the Leſſor or his heires at a certaine day, before the day the Leſſor is attainted of treaſon or felony, and alſo before the day is executed, now is the condition become impoſſible by the act and offence of the Leſſor, and yet the Leſſee ſhall not have fee becauſe a precedent condition to increaſe an eſtate muſt be performed, & if it become impoſſible, no eſtate ſhall riſe.

¶ *Pur ceo que le grantor ne poet entrer, &c.* Regularly when any man will take advantage of a condition, if he may enter hee muſt enter, and when he cannot enter he muſt make a claime, and the reaſon is, for that a freehold and inheritance ſhall not ceaſe without entry or clayme, and alſo the Feoffor or Grantor may waive the condition at his pleaſure. Pl.Com.Browning & Beſtons caſe.133.b.

If a man grant an Advowſon to a man & to his heires upon condition, that if the Grantor, &c. pay 20. pound on ſuch a day, &c. the ſtate of the Grantee ſhall ceaſe or be utterly voyd. The Grantor payeth the mony, yet the ſtate is not reveſted in the Grantor before a claime, & that claim muſt be made at the Church. (d) And ſo it is of a reverſion or remainder of a Rent, or Common, or the like, there muſt be a claime before the ſtate be reveſted in the Grantor by force of the condition, and that claime muſt be made upon the Land. Vi.Littleton cap.Villein. (d) Pl.Com.Brownings caſe 133.b.

A fortiori in caſe of a feoffment which paſſeth by Livery of ſeiſin there muſt be a re-entry by force of the condition before the ſtate be voyd. 42.E.3.1.

If a man bargaineth and ſelleth land by deed indented and inrolled with a Proviſo that if the bargainer pay, &c. that then the ſtate ſhall ceaſe and be voyd, he payeth the mony, the ſtate is not reveſted in the bargainer before a re-entry, and ſo it is if a bargain and ſale be made of a Reverſion, Remainder, Advowſon, Rent, Common, &c. And ſo it is if lands be deviſed to a man and to his heirs upon condition, that if the Deviſee pay not 20 pound at ſuch a day, that his eſtate ſhall ceaſe and be voyd, the mony is not payd, the ſtate ſhall not be veſted in the heir, before an entry. And ſo it is of the Reverſion or Remainder, an Advowſon, Rent, Common, or the like. Lib.2.fo.52. Sir Hugh Cholmleys caſe.

But the ſaid rule hath divers exceptions. Firſt in this preſent caſe of Littleton, for that hee can make no entry, he ſhall not be driven to make any claim to the reverſion, for ſeeing by conſtruction of law the Freehold and Inheritance paſſeth Maintenant out of the Leſſor: by the like conſtruction, the Freehold and inheritance by the default of the leſſee ſhall be reveſted in the Leſſor without entry or claime. Vid.Lib.1.fo.174. Digs caſe. 20.E.4.18,19.

2. If I grant a rent charge in fee out of my land upon condition, there if the condition be broken, the rent ſhall be extinct in my land, becauſe I (that am in poſſeſſion of the land) need make no claime upon the land, and therefore the Law ſhall adjudge the rent void without any clayme. Pl.Com.Brownings caſe. 133.b. 20.E.4.19.

3. If a man make a feoffment unto me in fee upon condition that I ſhall pay unto him 20. pound at a day, &c. before the day I let unto him the land for yeares reſerving a rent, and 20.E.4.19. 20.H.7.4.b.

after false of payment the Feoffee shall retaine the land to him and to his heirs, and the rent is determined and extinct, for that the Feoffor could not enter, nor need not claime upon the land for that he himselfe was in possession and the condition being collaterall is not suspended by the Lease, otherwise it is of rent reserved.

Lib. 1. 174. Digges case. 4. If a man by his deed in consideration of fatherly love, &c. covenant to stand seised to the use of himselfe for life, and after his decease to the use of his eldest son in taile, the remainder to his second son in taile, the remainder to his third son in fee, with a Proviso of revocation, &c. the father doth make a revocation according to the Proviso, the whole estate is maintenant revested in him without entry or claime for the cause aforesaid.

¶ *Le grantee ad uncore title pur 3. ans.* By this it appeareth that albeit the lessee had Pro tempore a fee simple, yet after that fee simple is divested out of him, and vested in the Lessor, he shall hold the lands for three yeares by the expresse limitation of the parties.

Pl. Com. in Fulmerstons case 107. b. If a man make a Lease for 40. yeares, the Lessee afterwards taketh a Lease for 20. yeares upon condition that if he doth such an act, that then the Lease for 20. yeares shall be void, & after the Lessee breake the Condition, by force whereof the second Lease is voyd, notwithstanding the lease for 40. yeares is surrendred, for the condition was annexed to the lease for 20 yeares, but the surrender was absolute. So it is if a man make a lease for 40. years, and the Lessor grant the reversion to the Lessee upon condition, and after the condition is broken, the tearme was absolutely surrendred. And the diversity is when the Lessor grants the reversion to the Lessee upon condition, and when the Lessee grants or surrenders his estate to the Lessor, for a condition annexed to a surrender may revest the particular estate, because the surrender is conditionall. But when the Lessor grants the reversion to the Lessee upon condition, there the condition is annexed to the reversion and the surrender absolute.

7. E. 4. 29. 14. E. 4. 6. 45. E. 3.

8. E. 2. Ass. 395. A gardian in Chivalry tooke a feoffment of the infant within age that was in his ward, and the infant brought an Assise, and the Gardian shall be adjudged a disseisor, which proveth that the feoffment as against the Infant was voyd, and yet by acceptance thereof the interest of the gardian was surrendred.

50. E. 3. 27. A man maketh a lease for tearme of life by Deed, reserving the first seven yeares a Rose, and if the lessee will hold the land after the seven yeares, to pay a rent in money, the lessee will not hold over, but surrender his tearme: In this case in judgement of law he had but a tearme for seven yeares. And so it is if a man make a lease for life, and if the lessee within one yeare pay not 20. shillings, that he shall have but a tearme for two yeares, if hee pay not the money the estate for life is determined, and he shall have the land but for two yeares.

¶ *Ceo est bone proofe adonques que le reversion est en luy, &c.* Here is implyed that no man can have an action of waste, unlesse the reversion be in him, and by the Authority of our Author the reason of a case, and well applyed is a good proofe in Law.

Sect. 351.

¶ Mes en tiels cases de feoffment sur cõdition lou le feoffor poit loyalment entrer p̃ le condition enfreint, &c. la le feoffor nad le franktenement devant son entrie, &c.

But in such cases of feoffment upon condition, where the feoffor may lawfully enter for the condition broken, &c. there the feoffor hath not the freehold before his entry, &c.

This upon that which hath been said is evident, and needeth no further explanation.

Sect. 352.

3. Mar. 134. Dyer 14. Eliz Dyer 311. b. 2. H. 4. 5. 44. E. 3. 9. Lib. 2. fo. 79, 80, 81. in Seignior Cromwels case. ¶ *Que le feoffee donera, &c.* Here is no time limited, therefore the Feoffee by the law hath time du-

¶ Item si feoffment soit fait sur tiel condition, que l'feoffee donera le terre al feoffor

Also if a feoffment be made upon such condition that the feoffee shall give the land to for

for, & a la feme del feoffor, a aver & tener a eux, & a les heires de lour deux corps engendres, & pur default de tiel issue, le remainder al droit heires le feoffor. En ceo cas si l'baron deby vivant la feme devant ascun estate en le taile fait a eux, &c. donques doit le feoffee per la ley fait estate a la feme cy pres le condition, & auxy cy pres lentent de le condition que il poit fait, cestascavoir, de lesser la terre al fem pur terme de vie sans impeachment d wast, l remainder apres son decease a les heires de corps sa baron de luy engendres, & pur default de tiel issue, le remainder ags droit heires le baron. Et la cause pur que le lease serra en cest cas a la feme sole sans impeachment de wast, est pur ceo q le condition est, q lestate serra fait al baron & a sa feme en taile. Et si tiel estate ust este fait en le vie le baron, donques apres le mort le baron el ust ewe estate ent en le taile: quel estate est sans impeachment de wast. Et issint il est reason, que cy pres que the feoffor, and to the wife of the feoffor, to have & to hold to them and to the heires of their two bodyes engendred, and for default of such issue, the remainder to the right heirs of the Feoffor. In this case if the husband dyeth living the wife before any estate in taile made unto them, &c. then ought the feoffee by the Law to make an estate to the wife as neer the condition, and also as neere to the intent of the condition as he may make it, That is to say, to let the Land to the wife for terme of life without impeachment of waste, the remainder after his decease to the heirés of the body of her husband on her begotten, and for default of such issue the remainder to the right heires of the husband. And the cause why the lease shal bee in this case to the wife alone without impeachment of waste is, for that the Condition is, that the estate shal be made to the husband and to his wife in taile. And if such estate had been made in the life of the husband, then after the death of the husband shee should have

ring his life, unlesse he be hastened by the requ t of the Feoffor or the heires of his body, as Littleton saith in the next Section.

¶ *Si le baron devie, &c.* But in this case if the Feoffee dyeth before any Feoffment made, then is the condition broken, because he made not the estates, &c. within the time prescribed by the Law. But if the feoffment bee made upon condition that the Feoffee before the feast of St. Michael the Archangell next following give the Land to the Feoffor and to his wife in taile, utsupra, and before the day the Feoffee dyeth, the state of the heire of the Feoffee shall be absolute, because a certaine time is limited by the mutuall agreement of the parties, within which time the condition becommeth impossible by the act of God, as hath beene said before, and therefore it is necessary when a day is limited, to adde to the condition, that the Feoffee or his heires doe performe the condition, but when no time is limited, then the Feoffee at his perill must performe the condition during his life (though there be no request made) or else the Feoffor or his heires may re-enter.

15. H. 7. 13. 33. H. 6. 26. 27. 9. Eliz. Dyer 262. Pl. Com. 456. Lib. 2. fo. 79. Seignior Cromwells case.

¶ *Fait a eux, &c.* Here the (&c.) implyeth according to the Condition with the remainder over.

¶ *Al feoffor & a la feme, &c.* Here it appeareth that albeit the Feme bee a stranger, yet the Feoffee is not bound to make it within convenient time, because the feoffor who is privie to the condition is to take joyntly

27. E. 3. Dower 135. Seignior Cromwels case ubi supra.

joyntly with her. And so it is if the condition bee to enfeoffe the Feoffor and an estranger, the Feoffee hath time during his life unlesse he be hastned by request. Otherwise it is (as hath beene sayd) where the condition is to enfeoffe a stranger or strangers only.

If a man make a feoffment in fee, upon condition that the Feoffee shall make a gift in taile to the Feoffor, the remainder to a stranger in fee, there the Feoffee hath time during his life, as is aforesaid, because the Feoffor who is party, & privie to the condition, is to take the first estate. But if the condition were to make a gift in taile to a stranger, the remainder to the Feoffor in fee, there the Feoffee ought to doe it in convenient time, for that the stranger is not privy to the condition, and he ought to have the profits presently, as before hath beene said. 208. b.

Seignior Cromwels case ubi supra.

home poit faire estate a lentent ỏ condition, &c. q̃ il serroit fait, &c. coment que el ne poit aver estate en taile si come el pusssoit aver si le done en le taile ust estre fait a sa baron & a luy en le vie sa baron.

had an estate in taile, which estate is without impeachment of waste. And so it is reason, that as near as a man can make the estate to the intent of the condition, &c. that it should be made, &c. albeit she cannot have estate in taile, as she might have had if the gift in tail had been made to her husband and to her in the life of her husband, &c.

¶ *De faire estate al feme cy pres le condition, & auxy cy pres lentent del Condition que il poit faire, &c.*

A. infeoffe B. upon condition that B. shall make an estate in Frankmariage to C. with one such as is the daughter of the feoffor, in this case he cannot make an estate in Frankmarriage, because the estate must move from the feoffee, & the daughter is not of his blood, but yet he must make an estate to them for their lives, for this is as neer the condition as he can. And so it is if the condition be, to make to A. (which is a meer lay man) an estate in frankalmoign, yet must he make an estate to him for his life, for the reason here yeelded by Littleton.

A diversity is to be understood between conditions that are to create an estate, & conditions that are to destroy an estate: for here it appeareth, That a condition that is to create an estate, is to be performed by construction of Law, as neere the condition as may be, and according to the intent and meaning of the condition, albeit the letter and words of the condition cannot be performed: but otherwise it is of a condition that destroyeth an estate, for that is to be taken strictly, unlesse it be in certaine speciall cases: and of this somewhat hath bin sayd before in this Chapter.

30. H. 8. tit. Condi. Br. 190. V. 33. H. 8. tit. Joint. Br. 62.

As if a man morgage his land to W. upon condition, that if the Morgageor and I.S. pay 10. shillings at such a day to the Morgagee, that then he shall re-enter, the Morgageor dyeth before the day, I.S. payes the mony to the morgagee, this is a good performance of the condition, and yet the letter of the condition is not performed. But if the Morgageor had bin alive at the day, & he would not pay the mony, but refused to pay the same, and I.S. alone had tendred the mony, the Morgagee might have refused it. But if a man make a lease to two for years, with a proviso, If the Lessees dye during the tearm, the Lessor shall re-enter, one Lessee alien his part and dye, the Lessee cannot re-enter, but the Assignee shall enjoy the term so long as the survivor liveth, and the reason is, because the lease by the proviso is not to cease till both be dead. But in the former case, albeit the morgageor be dead, yet the act of God shall not disable I.S. to pay the mony, for thereby the Morgagee receives no prejudice. And so it is that case if I.S. had dyed before the day, the morgageor might have paid it.

Lib. 2. fo. 79, 80, 81. Seignior Cromwels case 2. H. 4. 51.

And here is to be observed a diversity when the Feoffee dyeth, for then (as hath been sayd) the condition is broken, and when the Feoffor dyeth, for then the estate is to be made as neer the intent of the Condition as may be. 219. a.

¶ *Al feme pur terme de sa vie sans impeachment de wast.*

Here it appeareth, That this estate for life ought to be without impeachment of wast, and yet if the wife doth accept of any estate for life, without this clause, without impeachment of wast, it is good, because the state for life is the substance of the Grant, & the priviledge to be without impeachment of wast is collaterall and onely for the benefit of the wife, and the omission of it onely for the benefit of the heire.

2. H. 4. 5. Seignior Cromwels case, ubi supra.

Also if the wife take husband before request made, and then they make request, & the state is

is made to the husband and wife, during the life of the wife, this is a good performance of the condition, albeit the estate be made to the husband and wife, where Littleton saith it is to be made to the wife, but it is all one in substance, seeing that the limitation is during the life of the wife.

¶ *Sauns impeachment de Wast.* Absque impetitione vasti, (that is) without any challenge or impeachment of Wast, and by force hereof the Lessee may cut downe the trees & convert them to his owne use. Otherwise it is if the words were, Sauns impeachment per action de Wast, for then the discharge extends but to the action, & not to the trees themselves, and in that case the Lessor shall have them. See in my reports lib. 11. fo. 83. Lib. 9. fo. 9. li. 23.

And it is to be observed, That after the decease of the husband the state is not to be made to the wife and the heires of her body by her late husband ingendred, & so to have an estate of Inheritance as she should have had by survivor, if the estate had bin made according to the condition, but only an estate for life without impeachment of Wast, &c. for that by the authority of Littleton is not so neere the intent of the condition, as the case that Littleton putteth. But I will search no further into this case, but leave it to the learned and judicious Reader.

¶ *Et apres son decease a les heires del corps le baron de luy engendres.*

Note here, admit that there were two Issues in taile, the remainder shall presently vest only in the eldest, & yet if he dyeth without Issue, it shall per formam doni vest in the youngest, as hath bin said in the Chapter of estate taile: and so it is tacite proved here, for otherwise the condition (if there were two Issues) could not be performed.

Sect. 353.

ITem en cest case si le baron & la feme ont issue, & deviont devant le done en le taile fait a eux, &c. donques le Feoffee doit faire estate al Issue & a les heires de corps son pere & son mere engendres, & pur default de tiel Issue le remainder a les droit heires le Baron, &c. Et mesme la Ley est en auters cases semblables. Et si tiel Feoffee ne voet faire tiel estate, &c. quaunt il est reasonablement requise per eux q̄ devoyent aver estate per force de le condition, &c. donque poet le Feoffor ou ses heires entrer.

ALso in this case if the husband and wife have issue, and die before the gift in taile made to them, &c. then the feoffee ought to make an estate to the Issue, and to the heires of the body of his father & his mother begotten, and for default of such issue, &c. the remainder to the right heires of the husband, &c. And the same Law is in other like cases: & if such a Feoffee will not take such estate, &c. when he is reasonably required by them which ought to have the state by force of the Condition, &c. then may the Feoffor or his heires enter.

¶ *Quant il est reasonablement requise per eux queux devoyent aver estate per force de le Condition.*

Note here it appeareth, that the Feoffee hath time during his life to make the estate, unles he be reasonably required by them that are to take the estate. This is to be intended of parties or privies, and not of meere strangers, for there (as hath beene sayd) the state must be made in convenient time.

And concerning the request it is to be knowne, that when the request is made, the party or privy must request the feoffee at a time certaine to be upon the land, and to make the state according to the condition, for seeing no time certain is prescribed for the making of the state, and it is incertain when the request shall bee made, such request and notice must be made as hath bin said before in this Chapter, 211. a. And of this Section, with the (&c.) there needeth not, upon that which hath beene said, any further explication.

Sect.

Sect. 354.

¶ *Quele feoffee re-enfeoffera pluſors homes.* By the re-feoffement it is implyed to bee made to the Feoffors, for a feoffement over to ſtrangers cannot be ſaid a Re-feoffement, and if the feoffement ſhould be made over to ſtrangers onely, then as hath beene often ſaid, it muſt be made in convenient time.

208. b. 15. 219. b. 220. a. 2

¶ *Al Heire celuy que ſurveſquiſt, a aver & tener a luy & a les heires celuy que ſurveſquiſt.* Hereupon queſtions have beene made, wherefore the Habendum is not to the heirs of the heire, and for what reaſon it is by Littleton limited to the heires of the ſurvivor. And the cauſe is, for that if it were made to the heirs of the heire, then ſome perſons by poſſibility ſhould be inheritable to the land which ſhould not have inherited if the eſtate had beene made to the Survivor and his heires, and conſequently the condition broken.

For example, If the Survivor tooke to wife Alice Fairefield, in this caſe if the limitation were to the ſon and his heires, then if the ſon ſhould dye without heires of his father, the blood of the Fairefields (being the blood of his mother) ſhould inherit. But if the limitation be to the right heirs of the father, then ſhould not the blood of the Fairefields by any poſſibility inherit, for then it is as much as if the ſtate had beene made to the ſurvivor and his heirs: And therefore theſe words (Et a les heires celuy que ſurveſquiſt) which many have thought ſuperfluous, are very materiall. Note well this kind of fee ſimple, for it is worthy the obſervation: But ſufficient hath been ſaid to open the meaning of Littleton, & therefore I will dive no deeper into this point, but leave it to the further conſideration of the learned Reader.

Vide Sect. 4.

¶ Item ſi feoffment ſoit fait ſur condition que le feoffee re-infeoffe pluſs hoes a aver & tener a eux & a lour heires a touts jours, & touts ceux que devoient aver eſtat moront devant aſcun eſtat fait a eux, donque doit le feoffee fait eſtat al heir celuy q̄ ſurveſquiſt de eux, a aver & tener a luy & a les heires celuy que ſurveſquiſt.

ALſo if a feoffment be made upon condition, that if the feoffee ſhal re-enfeoffe many men, to have and to hold to them and to their heirs for ever, and all they which ought to have eſtate dye before any eſtate made to them, then ought the feoffee to make eſtate to the heir of him which ſurvives of them, to have & to hold to him and to the heirs of him which ſurviveth.

Sect. 355.

¶ Littleton having ſpoken of defaults of performance, or expreſſe breaches of conditions, ſpeaketh now in what caſes the feoffee in judgement of Law doth diſable himſelfe to performe the Condition; And of diſabilities ſome bee by act of the party, and ſome by act in Law.

¶ Item ſi feoffm̄t ſoit fait ſur condition, dēfeoffer un auter, ou d̄ doner en tail a un auter &c. ſi le feoffee devant le performance del condition enfeoffa un eſtranger, ou fait un leaſe pur term̄ d̄ vie, donques poet le feoffor

ALſo if a Feoffemēt be made upon condition, To enfeoffe another, or to make a gift in taile to another, &c. if the Feoffee before the performance of the Condition, enfeoffe a ſtranger, or make a Leaſe for life, then for

¶ *Ou a doner en taile a un auter, &c.* Here is implyed an eſtate for life, or for yeares, &c.

for a ſes heires entrer, &c. pur ceo q̄il ad luy meſm̄ diſable de performer le condition, entant que il ad fait eſtate a un auter, &c.

may the Feoffor and his heirs enter, &c. becauſe he hath diſabled himſelfe to performe the c̄odition, inaſmuch as he hath made an eſtate to another, &c.

¶ *Enfeoffe un Eſtranger ou fait un Leaſe pur terme de vie.* This is a diſability by the act of the party, for herein the Feoffer hath diſabled himſelfe to make the Feoffment or other eſtate according to the Condition. And to ſpeake once for all, the feoffee is diſabled when he cannot conbey the land over according to the Condition in the ſame plight, quality and freedome as the land was conbeyed to him, for ſo the law requireth the ſame, as ſhall manifeſtly appeare hereafter. And here where our Author ſpeaketh of a feoffment, he includeth an eſtate tayle as well as the fee ſimple.

13. H. 7. 23. b. 32. E. 3 barre 264. 21. Aſſ. 28. 38. Aſſ. pl. 7.

Sect. 357.

Sect. 356.

CEn meſme le manner eſt, ſi le feoffee, devant le condition performe leſſa meſme la terre a un eſtranger, pur terme des ans, en ceſt caſe le feoffor & ſes heires poyent entrer, &c. pur ceo que le feoffee ad luy diſable de faire eſtate de les tenements accordant a ceo que eſtoit en les tenements, quant eſtate ent fuit fait a luy. Car ſil voile faire eſtate de les tenements accordant a le condition, &c. donques poit le leſſee p̄ terme dans enter & ouſte meſme celuy a que leſtate eſt fait, &c. & occupier ceo durant ſon terme.

IN the ſame manner it is if the Feoffee before the Condition performed, letteth the ſame land to a ſtranger for terme of yeares, in this caſe the feoffor and his heires may enter, &c. becauſe the Feoffee hath diſabled him to make an eſtate of the tenements according to that which was in the tenements, when the ſtate therof was made unto him. For if he will make an eſtate of the tenements according to the Condition, &c. then may the Leſſee for yeares enter and ouſt him to whom the eſtate is made, &c. and occupy this during his terme.

¶ *SI le feoffee devant le condition perform leſſa meſme la terre a un eſtranger pur terme des ans, &c.* Here the &c. implyeth a leaſe to take effect in futuro as well as in præſenti, alſo a Leaſe for one yeare, or halfe a yeare, &c.

The reaſon of this is evidently ſet downe before. And again, of diſabilities ſome be by Act in præſenti, whereof Littleton hath put two examples, and ſome in futuro, whereof now he will ſpeake in the next Section.

Sect. 357.

CEt pluſors ont dit que ſi tiel feoffment ſoit fait a un home ſole ſur m̄ le condition, & devant q̄ il ad per-

AND many have ſaid that if ſuch feoffment be made to a ſingle man upō the ſame Condition, and before he hath per-

CFirſt, here is an example of a diſability both by act in Law, and in futuro, for by marriage the wife is intitled by Law to Dower, after the death of her husband.

Secondly, It (a) appeareth that albeit the wife by the marriage is but intitled to have

(a) 13. H. 7. 23. b. 34. E. 3. Dower 127. 27. E. 3. tit. dower 135. 27. Aſſ. Pl. 4. 12. H. 7. 7. 6. lib. 2. fol. 39. b.

have dower, & the estate which she is to have in futuro, viz. after the decease of her husband, yet it is a present cause of entry. As a lease for yeares to begin at a day to come is a present disability and cause of reentry, for that the Land is not in that freedome and plight, as it was conveyed to the Feoffee, and after the state made over according to the Condition the land shall be charged therewith.

Julius Winningtons case. lib.2 fo.59.60.

¶ *En un auter plight.* Plight is an old English word, and here signifieth not only the estate, but the habit and quality of the land, & extendeth to rentcharges, and to a possibility of Dower. Vide Sect. 289. where Plight is taken for an estate or interest of & in the land it selfe, and extendeth not to a Rent Charge out of the land.

¶ *A un home sole.* For if the Feoffee were married at the time of the feoffement, then the dower can bee no disability, because the Land shall remaine in such Plight as it was at the time of the feoffment made unto him.

forme meisme la condition il prent feme, donques le feoffor & ses heires maintenant poiēt entrer, pur ceo que sil feisoit estate accordant a la condition, & puis morust, donques la feme serra endowe, & poit recover sa dower per briefe de dower, &c. & issint per le prisel del feme les tenements sont mis en un auter plit̄ que ne fueront al temps del feoffment sur condition, pur ceo que adonques nul tiel feme fuit dowable, ne serroit dowe per la ley, &.

formed the same Condition he taketh wife, then the Feoffor and his Heires maintenant may enter, because, if he hath made an estate according to the condition & after dieth, then the wife shall be endowed, and may recover her dower by a Writ of Dower, &c. and so by the taking of a wife, the Tenements bee put in another plight than they were at the time of the feoffment upon Condition, for that then no such Wife was dowable, nor should bee endowed by the Law, &c.

¶ *Donques le feoffor & ses heires maintenant poient entrer.* Here it appeareth that seeing that for this title or possibility the feoffor may presently enter, that albeit the wife happen to dye before the husband, so as this title or possibility tooke no effect, yet the feoffor may re-enter, for the Feoffee being disabled at any time, though the same continue not, yet the Feoffor may re-enter, for in that case, he that is once disabled is ever disabled. And herein a diversity is to be observed betweene a disability for a time on the part of the feoffee, and a disability for a time of the part of the feoffor. For if a man maketh a feoffment in fee upon Condition that the Feoffee before such a day shall re-enfeoffe the Feoffor, the Feoffee taketh wife, and the wife dyeth before the day, yet may the Feoffor re-enter.

So it is if the Feoffee before the day entreth into Religion, and is professed, and before the day is deraigned, yet the Feoffor may re-enter.

21.E.4.55. So it is if the Feoffee before the day make a feoffment in fee, and before the day take backe an estate to him and his heires, yet the Feoffor may re-enter.

Albeit in these cases a certaine day be limited, yet the Feoffee being once disabled is ever disabled. And so it is when no time is limited by the parties, but the time is appointed by the Law.

But if a man make a feoffment in fee upon Condition, that if the Feoffor or his heires pay a certaine sum of money before such a day, the Feoffor commit treason, is attainted and executed, now is there a disability on the part of the Feoffor, for he hath no heir, but if the heire be restored before the day, he may performe the Condition, as it was resolved (*) Trin.18.Eliz. in Communi Banco in Sir Thomas Wiats case, which I heard and observed. Otherwise it is if such a disability had growne on the part of the Feoffee, and the reason of the diversity is, for that as Littleton saith, maintenant by the disability of the Feoffee, the Condition is broken, and the Feoffor may enter, but so it is not by the disability of the Feoffor, or his heirs, for if they performe the Condition within the time, it is sufficient, for that they may at any time performe the condition before the day. And so it is if the Feoffor enter into religion, and before

(*) Trin.18.Eliz.in Communi Banco in Sir Thomas Wiats case.

the day is veraigned, he may performe the Condition for the cause aforesaid, Et sic de similibus. The (&c.) in this Section are sufficiently explained.

Sect. 358.

¶ EN meisme le maner est, si le feoffee charge la terre per son fait dun rent charge devant le performance del condition, ou soit oblige en un estatute de le Staple, ou statute Merchant, en tiels cases le feoffor & ses heires poyent entrer, &c. Causa qua supra. Car quecunque que venust a les tenemts per le feoffment de le feoffee, eux covient estre liables, & estre mis en execution per force de lestatute Merchant, ou de statute del Staple, Quære. Mes quant le feoffor ou ses heires, pur les causes avãtdits, averont entrer, come ils devoyent, come il semble, &c. donques touts tiels choses que devant tiel entrie puissent troubler ou encumber les tenements issint dones sur condition, &c. quant a meismes les tenemẽts sõt oustement defeats.

IN the same mãner it is if the Feoffee charge the land by his Deed with a rent charge before the performance of the Condition, or be bound in a Statute Staple or Statute Merchant, in these cases the Feoffor and his heires, may enter, &c. *Causa qua supra.* For whosoever commeth to the Lands by the feoffment of the Feoffee, they ought to be lyable and put in execution by force of the Statute Merchant, or of the Statute Staple, *Quære.* But when the Feoffor or his heires for the causes aforesaid, shall have entred, as it seemes, they ought, &c. then all such things which before such entry might trouble or incumber the Land so given upon condition, &c. as to the same Land, are altogether defeated.

¶ *Poyent entrer, &c.* And here it is to bee understood, that the grant of the rent charge is a present disability of the feoffee, and therefore albeit the grantee doth bring a writ of Annuitie, and discharge the Land of it ab initio, yet the cause of entrie being once given by the Act of the Feoffee, the Feoffor may re-enter. And so it is if the grant of the rent charge were made for life, and the Grantee died before any day of payment, yet the Feoffor may re-enter. 13.H.7.23.b. 44.E.3.9.b. 26.E.3 73. 20.H.6.34. Julius Winningtons case ubi supra.

The like Law is of any judgement given against the Feoffee wherin debt or damages are recovered.

¶ *Ou soit oblige in un Statute de le Staple, &c.* If the Feoffee be disseised, and after bind himselfe in a Statute Staple, or Merchant, or in a Recognisance, or take wife, this is no disability in him, for that during the disseisin, the land is not charged therewith, neither is the Land in the hands of the Disseisor lyable thereunto. And in that case if the wife dye or the Conusee release the Statute or Recognizance, and after the disseisee doth enter, there is no disabilitie at all, because the Land was neber charged therewith, and therefore in that case the Feoffee may enter and performe the Condition in the same plight and freedome as it was conveyed unto him. Lib.2.fo.59.60. Julius Winningtons case

And it is to be observed, that Littleton putteth these cases as examples, for there are some other disabilities implyed, that are not here expressed. 18.Ass Pl.ultimo 19.E.3. 39. Lib.2.fo.80.b. Sir Cromwels case.

The Lord Clifford did hold his Barony and the Shrieffwicke of Westmerland of the King by Grand Serjeanty in capite, and the King gave him Licence that he might infeoffe thereof divers Chaplains in fee, so that they should give the same to the Lord Clifford & the heires males

males of his body the remainder over, &c. the Lord Clifford according to the Licence infeoffed the Chaplains, & before they made the reconveyance the Lord Clifford dyed, and it was adjudged that the heire might enter for the condition broken. For in this case the feoffees were bound by Law to have made the gift in taile to the Lord Clifford himself, albeit he never made any request, for otherwise they pursued not the Licence, and if they should make the state to the issue of the Lord Clifford, then might the King seise the Barony, &c. for default of a licence, and that in default of the Feoffees. And then the same should not be in the same plight and freedome as it was at the time of the feoffment made upon condition, which is worthy of observation.

If a man grant an Advowson, upon condition, that the grantee shall regrant the same to the Grantor in taile, In this case if the Church become voyd before the regrant or before any request made by the Grantor, he may take advantage of the condition, because the Advowson is not in the same plight as it was at the time of the grant upon condition. And so was it resolved, (*) Pasch. 14. Eliz. in communi Banco, betweene Andrewes and Blunt, which I heard and observed, and which my Lord Dyer hath omitted out of his report of that case, & therefore the Grantee in that case at his perill must regrant it before the Church become voyd, or else he is disabled, otherwise he hath time during his life if he be not hastened by request.

(*) Pasch. 14. Eliz. 311. Dyer.

44. E. 3. 9. If the feoffee suffer a recovery by default upon a fained title, before execution sued the feoffor may re-enter for this disability, Et sic de similibus.

Sect. 359.

¶ *ET ẽ le fait est nul condition, &c.* either in deed or in Law.

¶ *Et le feoffment est en tiel force sicome nul tiel fait ust este fait.*

18. E. 3. 19. 36. 17. Ass. p. 20. 8. H. 5. 8. 27. H. 6. And the reason hereof is, for that the estate passeth by the livery of seisin. And in this case the feoffor upon the deliverie of seisin must expresse the state to him and his heirs or to the heires of his body, &c.

34. Ass. pl. 1. If an agreement bee made betweene two, that the one shall infeoffe the other upon condition in suretie of the payment of certaine money, and after the livery is made to him and his heires generally, the state is holden by some to be upon condition, in asmuch as the intent of the parties was not changed at any time, but continued at the time of the livery.

¶ ITem, si un hom fait un fait de feoffmẽt a un auter, & en le fait est nul condition, &c. & quant le feoffor a luy voyle faire livery de seisin per force de mesme le fait, il fait a luy le livery de seisin sur certaine condition, en cest cas rien de les tenements passa per le fait, pur ceo que le condition nest comprise deins le fait, & se feoffment est en tiel force sicome nul tiel fait ust este fait.

ALso if a man make a deed of feoffment to another, & in the deed there is no condition, &c. & when the feoffor will make liverie of seisin unto him by force of the same deed, he makes liverie of seisin unto him upon certain condition, in this case nothing of the tenemẽts passeth by the deed, for that the condition is not comprised within the deed, & the feoffment is in like force as if no such deed had beene made.

13. E. 3. tit. Estoppell 177. 19. E. 3. ibid. 184. If a man make a Charter of feoffment in fee, and the feoffor deliver seisin for life, the Feoffee shall hold it but for life, but if the Livery be expressly for life, and also according to the deed, the whole fee simple shall passe, because it hath a reference to the Deed.

Sect. 360.

¶ *ITem si feoffment soit fait, &c.* And

¶ ITem si feoffmẽt soit fait sur tiel

ALso if a feoffment bee made con-

condition, q̃ le feoffee ne alienera la terre a nulluy, cest condition est voide, pur ceo que quant home est enfeoffe de terres ou tenements il ad power de eux alener a ascun person per la ley. Car si tiel condition serroit bone donque la condition luy ousteroit de tout le power que la ley luy dona, le quel serroit enconter reason, & pur ceo tiel condition est voyde.

upon this condition, that the feoffee shall not alien the land to any, this condition is voyd, because when a man is infeoffed of lands or tenements, he hath power to alien them to any person by the law: for if such a condition should bee good, then the condition should oust him of all the power which the Law gives him, which should bee against reason, & therefore such a condition is voyd.

the like Law is of a devise to see upon condition that the Deuisee shall not alien, the condition is voyd, and so it is of a grant, release, confirmation or any other conveyance whereby a fee simple doth passe. For it is absurd and repugnant to reason, that hee that hath no possibility to have the land revert to him, should restraine his feoffee in fee simple, of all his power to alien. And so it is if a man bee possessed of a lease for yeares, or of a house, or of any other chattell reall or personall, and give or sell his whole interest, or propertie therein, upon condition that the Donee or Vendee shal not alien the same, the same is void, because his whole interest and property is out of him, so as hee hath no possibility of a Reverter, and it is against Trade and trafficque, and bargaining and contracting between man and man: and it is within the reason of our Author that it should ouster him of all power given to him. Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem; and Rerum suarum quilibet est moderator & arbiter. And againe, Regulariter non valet pactum de re mea non alienanda. But these are to bee understood of conditions annexed to the grant or sale it selfe in respect of the repugnancy, and not to any other collaterall thing, as hereafter shall appeare. Where our Author putteth his case of a Feoffment of Land, that is put but for an example: for if a man be seised of a Seigniory, or a Rent, or an Advowson, or Common, or any other inheritance that lyeth in grant, and by his Deed granteth the same to a man and to his heires upon condition that he shall not alien, this condition is void. But some have said that a man may grant a Rent charge newly created out of lands to a man and to his heires upon condition that he shall not alien that, that is good, because the rent is of his owne creation, but this is against the reason and opinion of our Author, and against the height and purity of a fee simple.

21.H.6.34.a. 8.H.7.10.b. 33.Ass.11.24.Doct.& Stud.39.124.13.H.7.23.

Argument. ex absurdo, Vid.S.C.721.

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A man before the Statute of Quia emptores terrarum might have made a feoffment in fee, and added further, That if hee or his heires did alien without license, that hee should pay a fine, then this had been good. And so it is said, that then the Lord might have restrained the alienation of his Tenant by condition, because the Lord had a possibility of reverter, and so it is in the Kings case at this day, because he may reserve a tenure to himselfe.

14.H.4.13.H.7.23. 21.H.7.8.Lib.5. 56.Knights case.

If A. be seised of Blacke acre in fee, and B. infeoffeth him of White acre, upon condition that A. shall not alien Black acre, the condition is good, for the condition is annexed to other land, & ousteth not the feoffee of his power to alien the land whereof the feoffment is made, & so no repugnancy to the state passed by the feoffment, and so it is of gifts, or sales of chattels reals or personals.

Sect. 361.

¶ Mes si condition soit tiel, que le feoffee ne alienera a un tiel, nosmant son nosme, ou

But if the condition be such that the feoffee shal not alien to such a one, naming his name, or to any of his

¶ If a feoffment in fee be made upon condition that the Feoffee shall not infeoffe I. S. or any of his heires or Issues, &c. this is good, for he doth not restraine the feoffee of all his power: the reason here yeelded by our Author

Pl.Com.77.a.8.H.7.10.b. 21.E.4.47.a.

Author is worthy of observation. And in this case if the Feoffee infeoffe I.N. of intent and purpose that he shall infeoffe I.S. some hold that this is a breach of the condition, for Quando aliquid prohibetur fieri, ex directo prohibetur & per obliquum.

10.H.7.11.Dost. & Stud. 124.13.H.7.23.

If a feoffement bee made, upon condition that the feoffee shall not alien in Mortmaine, this is good, because such alienation is prohibited by Law, and regularly whatsoeuer is prohibited by the Law, may be prohibited by condition, be it Malum prohibitum, or malum in se. In ancient deeds of feoffment in fee there was most commonly a clause, Quod licitum sit donatorio rem datam dare vel vendere cui voluerit, exceptis viris religiosis & Judæis.

Reg:

Bracton lib.1.fol.13.a.

a alcun ô ses heires, ou de issues ô un tiel, &c. ou hujusmodi, les queux conditiõs ne tolient tout la power dalienation del feoffee, &c. donqs tiel condition est bone.

heires, or of the issues of such a one, &c. or the like, which conditions doe not take away all power of alienation from the feoffee, &c. then such condition is good.

Sect. 362.

33.Ass.11.24.lib.6.40. 41.Mildmayes case. 21.H.6.33.13.H.7.23. 21.H.7.11. Vid.Sect.220.Acc.

NOte here, the double negative in legall construction shal not hinder the negative, viz. Sub conditione quod ipsi nec hæredes sui non alienarent. And therfore the Grammaticall construction is not alwayes in judgement of law to be followed.

ITem si tenements soient dones en le taile sur tiel condition, que le tenant en le taile ne ses heires ne alieneront en fee, ne en le taile, ne pur terme dauter vie, forsque pur lour vies demeine, &c. tiel condition est bone. Et la cause est, pur ceo que quant il fist tiel alienation & discontinuance de l'taile, il fait le contrarie a lintent le donor, pur que lestatute de W.2. cap. 1. fuit fait, per quel estatute les estates en le taile sont ordeines.

ALso if lands bee given in taile upon condition, that the tenant in taile nor his heires shall not alien in fee, nor in taile, nor for terme of anothers life, but onely for their owne lives, &c. such Condition is good. And the reason is, for that when hee maketh such alienation and discontinuance of the entaile, hee doth contrary to the intent of the donor, for which the Statute of *W.2. cap.* 1. was made, by which Statute the estates in taile are ordained.

¶ *Forsque pur lour vies demesne, &c.* And yet if a man make a gift in taile, upon condition that he shall not make a lease for his owne life, albeit the state bee lawfull, yet the condition is good, because the reversion is in the Donor. As if a man make a lease for life or years, upon condition, that they shall not grant over their estate or let the land to others, this is good, and yet the Grant or Lease should bee lawfull. (*) If a man make a gift in taile, upon condition that he shal not make a lease for three lives, or 21. yeares according to the Statute of 32.H.8 the condition is good, for the statute doth give him power to make such leases, which may bee restrained by condition, and by his owne agreement, for this power is not incident to the estate, but given to him collaterally by the Act, according to that rule of Law, Quilibet potest renunciare juri pro se introducto.

21.H.6.33.13.H.7.23. 24.27.H.8.17.19. 31.H.8.Dyer 45.

(*) Dyer 33.H.8.fo.48,49.

32:H8:ca:28:

¶ *Quant il fist tiel alienation & discontinuance del state taile.* And therefore if a gift in taile be made upon condition, That the Donee, &c. shall not alien, this condition is good to some intents, and voyd to some: for as to all those alienations which amount to any discontinuance of the state taile, (as Littleton here speaketh) or is against the Statute of Westminster 2. the condition is good without question. But as to a common recovery, the condition is voyd, because this is no discontinuance, but a barre, and this common recovery

Vid.Lib.6.40.41. Sir Anth.Mildmaies case.

v. Rep.10.fo: 39 Forthingtons case.

recovery is not restrained by the said Statute of W.2. And therefore such a condition is repugnant to the estate taile for it is to be observed, that to this estate taile there be divers incidents First, to be dispunished of wast. Secondly, That the wife of the Donee in Taile shall bee endowed. Thirdly, That the husband of a Feme Donee after Issue shall be tenant by the Curtesie. Fourthly, That Tenant in tayle may suffer a common recovery: and therefore if a man make a gift in tayle, upon condition to restraine him of any of these incidents, the condition is repugnant and voyd in law. And it is to be observed, * that a collateral warranty or a lineall with assets in respect of the recompence, is not restrained by the statute of Donis conditionalibus, no more is the common recovery in respect of the intended recompence. And Littleton to the intent to exclude the common recovery, saith, Iiel alienation & discontinuance, joyning them together.

22.E.3.19. 17.El.343. Dyer

(*) 13.H.7.24.b.

If a man before the Statute of Donis conditionalibus, had made a gift to a man and to the heirs of his body, upon condition, That after Issue he should not have power to sell, this condition should have been repugnant and voyd: Paritatione, after the Statute a man makes a gift in tayle, the law tacite gives him power to suffer a common recovery, therefore to adde a condition, that he shall have no power to suffer a common recovery, is repugnant and voyd.

If a man make a feoffment to a Baron and Feme in fee, upon condition, That they shall not alien, to some intent this is good, and to some intent it is voyd, for to restraine an alienation by feoffment, or alienation by deed, it is good, because such an alienation is tortious and voydable: but to restrain their alienation by Fine is repugnant and voyd, because it is lawfull and unavoydable.

10.H.7.11. 13.H.7.23. Lib.6 41.b. in Sir Anth. Mildemayes case, ubi supra.

It is said, That if a man infeoffe an Infant in fee, upon condition, That he shall not alien, this is good to restraine Alienations during his minority, but not after his full age.

It is likewise said, That a man by Licence may give land to a Bishop and his Successors or to an Abbot and his Successors, and add a condition to it, that they shall not without the consent of their Chapiter or Covent, alien, because it was intended a Mortmain, that is that it should for ever continue in that Sea or house, for that they had it en autre droit, for religious and good uses.

Doctor & Stud. 124.

¶ *Le statute de W.2. cap.1.* Hereby it appeareth, That whatsoever is prohibited by the intent of any Act of Parliament, may bee prohibited by condition, as hath beene sayd. *Jap. B*

10.H.7.11. Doct. & Stud. 124. 13.H.7.23.

Sect. 363.

¶ CAr il est prove per les parols compriles en meſme Lestatute, que la volūt del Donor en tiels cases serront obserū, & quant le Tenant en le Taile fait tiel discontinuāce, il fait le contrary a ceo, &c. Et auxy en estates en l' taile dascun Tenements, quant l' reversion de fee simple, ou remainder en Fee simple est en auters persons, quant tiel discontinuanc̄ ē fait, donques le fee simple

FOr it is proved by the words comprised in the same statute, That the will of the Donor in such cases shall be observed, and when the Tenant in Taile maketh such discontinuance, hee doth contrary to that, &c. And also in estates in Taile of any Tenements, when the Reversion of the fee simple, or the remainder of the fee simple is in other persons, when such discontinuance is made, thē the fee sim-

¶ *Quant le reversion ou rem' en fee est en auters persons.*

But the case that a man make a gift in Tayle to A. the remainder to him and to his heires, upon condition that hee shall not alien, as to the state taile the condition is good, for such alienation is prohibited, as hath been said, by the sayd Statute. But as to the Fee simple, some say it is repugnant and voyd, for the reason that Littleton hath yeelded: and therefore some are of opinion, That this is a good Condition, and shall defeat the alienation for the estate taile onely, and leave the Fee simple in the alienee, for that the condition did in Law extend only to the state taile, & not to the remainder.

11.H.6. 13.H.7.23.24. Dyer 2.& 3.Ph.& Mar. 127.b.

J. 360

¶ *Encounter le profit*

fit de ses issues. Hereby it appeareth, that to restrain tenant in taile frō alienation against the profit of his Issues, is good, for that agreeth with the will of the Donor, & the intent of the Statute.

(*) 46.E.3.4

But a gift in taile may be made upon condition, That Tenant in taile, &c. may alien for the profit of his issues, and that hath been holden to be good, and not restrained by the said Statute, and seemeth to agree with the reason of Littleton, because in that case Voluntas Donatoris observetur, &c. and it must be for the profit of the issues.

en le remainder est discontinue. Et pur ceo que l' Tenant en taile ne ferr̄ tiel chose encounter le profit d̄ ses issues & boñ droit, tiel condition est boñ come est avauntdit, &c.

ple in the remainder is discontinued. And because Tenant in Taile shall doe no such thing against the profit of his issues, and good right, such Condition is good, as is aforesaid, &c.

Sect. 364.

¶ A *Lienont, &c. Et auxy si touts les Issues soient morts, &c.* Note Littleton purposely made parcell of the Condition in the Copulative, that the Tenant in Taile should alien, &c. For if a gift in Taile bee made to a man and to the heires of his body, and if he die without heires of his body, that then the Donor and his Heires shall re-enter, this is a voyd Condition, for when the issues faile, the estate determineth by the expresse limitation, and consequently the adding of the condition to defeate that which is determined by the limitation of the estate, is voyd, and in that case the wife of the Donee shall be endowed, &c. And therefore Littleton to make the Condition good, added an alienation, which amounted to a wrong, and he restrained not the alienation onely, (for then presently upon the alienation the Donor, &c. might re enter, and defeat the estate Taile)

21.H.7.21

ITem home poit doner Terres en taile, sur tiel condition, Que si le tenant en le Taile ou ses heires alienont en fee ou en taile, ou pur terme dauter vie, &c. & auxy que si touts issues veignants del Tenant en le taile soient morts sans Issue, que adonques bñ lirroit al donor & a ses heires de entrer, &c. Et per tiel voy le droit de le taile poet estre salve apres discontinuance al issue en le taile, si ascun y soit, issint que per voy dentre del Donor, ou de ses heires le taile ne ser̄ my defeat per tiel condition: Quære hoc. Et uncore si le Tenant en l' taile en ceo case, ou ses heires font ascun discontinuance celuy en le reversion ou ses heires, apres ceo que le taile est determine, pur default de issue, &c. poient entrer

ALso a man may give lands in Taile upon such Condition, that if the Tenant in Taile or his heires alien in fee or in taile, or for terme of another mans life, &c. and also that if all the Issue comming of the Tenant in Taile be dead without Issue, that then it shall be lawfull for the Donor and for his heirs to enter, &c. And by this way the right of the taile may bee saved after discontinuance, to the issue in taile, if there bee any: so as by way of entry of the Donor or of his heires, the taile shall not be defeated by such conditiō: *Quære hoc.* And yet if the tenant in taile in this Case, or his heirs, make any discontinuance, hee in the reversion or his heires, after that the Taile is determined for default of Issue, &c. may enter into

en

en le terre per force de meisme le condition, & ne serront my cohert de suer briefe de formdon en le reverter.

the Land by force of the same Condition, and shall not be compelled to sue a Writ of Formedon in the reverter.

but added, and die without issue, to the end that the right of the estate in taile might bee preserved, & not defeated by the Condition. but might bee recovered againe by the issue in tayle in a Formedon.

And Littleton expressely saith, that the Donor and his heires after the discontinuance, and after that the estate taile is determined, may re-enter, which is the intention and true meaning of Littleton in this place. And where it is said in this Section (Quære hoc) this is added by some that understood not this case, and is not in the originall.

Note, that in a Condition consisting of divers parts in the conjunctive, as here in the case of Littleton, both parts must be performed, according to the old rule, (a) Si plures conditiones ascriptæ fuerunt donationi conjunctim omnibus est parendum & ad veritatem copulative requiritur quod utraque pars sit vera. But otherwise it is when the Condition is in the disjunctive, for the same Author in that case saith, Si divisim cuilibet, vel alteri eorum satis est obtemperare. Et in disjunctivis sufficit alteram partem esse veram. what then if the Condition or Limitation be both in the Conjunctive and Disjunctive: as if a man make a Lease to the Husband and wife for the terme of one and twenty yeares, if the Husband and wife, or any Childe betweene them so long shall live, and then the wife dyeth without issue; shall the Lease determine or continue during the life of the Husband? And the answer is, that it shall continue, for the disjunctive referreth to the whole, and disjoyneth not only the latter part, as to the Child, but also to the Baron and Fem, so as the sense is, if the Baron, Fem or any Childe shall so long live.

(a) Bracton lib. 2. fo. 19. vid. Pl. Com. 76. in Wimbeshes case. & fol. 107. in Fulmertons case. Bracton ubi supra.

So it was adjudged in Com. Banco pasch. 30. Eliz. inter Baldwyn & Cocke commonly called Trupennies case.

(b) And so it is, if an use be limited to certaine persons, untill A. shall come from beyond Sea and attaine unto his full age, or dye, if he doth come from beyond Sea, or attaine to his full age, the use doth cease.

(b) Hill. 35. Eliz. en tres-pas entre le seignior Mordant vers George Vaux so adjudged in the Kings Bench.

Sect. 365.

ITem, home ne poit pleder en ascun action, que estate fuit fait en fee, ou en fee taile, ou pur terme de vie, sur condition sil ne voucha un record de ceo, ou monstra un escript south seale, provant meisme la condition. Car il est un common erudition, que home per plee ne defeatera ascun estate d frank-tenement per force dascun tiel conditiõ, sinon que il monstra le proofe de condition en escript, &c. si-

ALso a man cannot plead in any action, that an estate was made in fee, or in fee tayle, or for terme of life upon Condition, if he doth not vouch a Record of this, or shew a writing under Seale, proving the same Condition. For it is a common learning, that a man by plea shall not defeat any estate of freehold by force of any such Condition, unlesse he sheweth the proofe of the condition in writing, &c. unlesse it bee

¶ *En ascun action.*

Bee the action reall, personall or mixt, if a condition be pleaded to defeat a freehold, it is regularly true, that a Deed must bee shewed forth (a) in Court. And the reason why the deed shall bee shewed forth to the Court is, for that in every deed there be two things requisite, the one that it be sufficient in Law, and this is called the Legall Part, and therefore the judgement of that belongeth to the Judges of the Law: the other concernes matter of fact, as sealing and delibery, and this belongs to the Jurors. And because every Deed ought to approve it self, and be proved by others too; it must approve it selfe upon the shewing of it forth in Court in two manners.

30. E. 3. 22. 4 E. 4. 35. 2. 9. E. 4. 25. b. 26. 2 6. H. 7. 8. b. 11. H. 7. 22. b. 7. H. 6. 7. 14. H. 8. 22. b. 28. Ass. p. 1.

(a) Lib. 10. fo. 92. Doctor Layfields case. 7. E. 3. 57. 25. E. 3. 41. 41. E. 3. 10. Acc.

First, as to the composition of the words, that it bee

sufficient in Law, and that the Court shall adjudge.

Secondly, of ancient time if the Deede appeared to bee raſed or interlined in places materiall, the Judges adjudged upon their view, the Deed to bee voyd. But of later time, the Judges have left that to the Jurors to try whether the raſing or interlining were before the delivery.

45.E.3.21.a. And there is a difference betweene a rent, and a re-entry, for upon a gift in taile, or a leas for life, a rent may be reserved without Deed, but a Condition with a re-entry cannot bee reserved in those cases without deed.

Lib.5.fol.52.53.&c. Pages Case. 6.R.2.cap.4. ¶ *Escript de south scale.* Which Littleton intendeth to bee a Deed under Seale.

And well sayd Littleton, A Deede under Seale, For though the Deed be inrolled, yet hee cannot plead the inrolment thereof, though it be of record. And though it be exemplified under the great Seale, (b) yet must he shew forth the Deed it selfe under Seale, as Littleton here saith, and not the exemplification. And so when Littleton wrote, no Constat or inspeximus of the Kings Letters Patents were available to bee shewed forth in Court, but the Letters Patents themselves under Seale. For both the Constat and inspeximus are but exemplifications of the inrolment of the Charters or Letters Patents: and this appeareth by the resolution of two severall (c) Parliaments, one holden in the third and fourth yeare of King Edward the first, and the other in the thirteenth yeare of Queene Elizabeth. But now by those Statutes the exemplification or Constat under the great Seale of the inrolment of any Letters Patents made since the fourth day of February, Anno 27.H.8. or after to be made, shall be sufficient to be pleaded and shewed forth in Court, aswell against the King as any other person, by the Patentees themselves (whereof there was some doubt (d) conceived upon the said statute of E.6.) and by all and every other person and persons claiming by, from or under them. Which Statutes are generall and beneficiall, and especially the Act of 13.Eliz. for that extends not only to Lands, Tenements and Hereditaments, but to every other thing whatsoever, and ought to be favourably construed for advancement of the remedy and right of the subject.

(b) Vid.32.H.8.in Patents Br. 12.H.7.12 b.

(c) 3.& 4.E.6.cap.4.& 13.El.cap.6.

(d) Dyer.1.Eliz 167.

The difference between a Constat, Inspeximus, and a Vidimus, you may reade (e) at large in Pages case. But none of them by Law ought to bee had, but only of the inrolment of record, and not of a Deed or any other writing that is not of Record, and no Deed, &c. can bee inrolled, unlesse it be duely and lawfully acknowledged.

(e) Lib.8.fo.8.in the Princes case. Vid. Pages case ubi supra.

¶ *Si non que soit en ascun especiall cases, &c.* Hereby is implyed that if a Guardian in Chivalry in the right of the heire entreth for a Condition broken, hee shall plead the state upon condition, without shewing of any Deed, because his interest is created by the Law. And so it is (f) of a Tenant by Statute Merchant or Staple, or Tenant by Elegit.

33.E.3.gard.162.20.E.3. darrein presen.13.35.H. 6.tit.monstrans des faits 118. (f) 20.H.7.5.

Likewise Tenant in Dower shall plead a Condition, &c. without shewing of the Deed. And the reason of these and the like cases is, for that the law doth create these estates, and they come not in by him that entred for the Condition broken, so as they might provide for the shewing of the Deed, but they come to the Land by authority of Law, and therefore the law will allow them to plead the Condition without shewing of it.

5.E.3.37.11.H.4.83. 35.H.6.tit.monstrans des faits 11.b.7 H.6. 17.H.5. 5.3.H.6.21. 33.H.6.1. 14.H.8.8.

(f) But the Lord by eſcheat, albeit his eſtate be created by Law, ſhall not plead a Condition to defeat a freehold without ſhewing of it, becauſe the Deed doth belong unto him. (f) 35. H. 6. ubi ſupra.

A Tenant by the curteſie ſhall not (g) plead a condition made by his wife, and a re-entry for the condition broken without ſhewing the Deed, for albeit his eſtate bee created by Law, yet the Law preſumeth that hee had the poſſeſſion of the Deeds and evidences belonging to his wife. (g) 35. H. 6. ubi ſupra.

(h) But Leſſees for yeares, and all others that claime by any Conveyance from the party, or juſtifie as ſervant by commandement &c. muſt ſhew the Deed. (h) 14. H. 8. 8. Pl. Com. 149.

(i) R. brought an Ejectione firmæ againſt E. for ejecting him out of the Mannor of D. which he held for term of years of the demiſe of C. E. the Defendant pleaded that B. gave the ſaid Mannor to P. and Katherine his wife in taile, who had iſſue, E the Defendant, and after the Donees infeoffed C. of the Mannor, upon condition that hee ſhould demiſe the Mannor for yeares to R. the Plaintife, the remainder to the husband and to the wife &c. C. did demiſe the land to R. the Plaintife for yeares, but kept the reverſion to himſelfe, wherefore Katherine after the deceaſe of her husband entred upon the Plaintife, &c. for the condition broken, and dyed, after whoſe deceaſe the land deſcended to E. the iſſue in taile, &c. now defendant, judgement ſi action, exception was taken againſt this plea, becauſe E. the Def. maintained his entry by force of a condition broken, and ſhewed forth no Deed, & the plea was ruled to be good, becauſe the thing was executed, and therefore he need not ſhew forth the Deed. Nota the defendant being iſſue in taile, was remitted to the eſtate taile. (i) 44. E. 3. 22. See after this chapter Sect. 366.

In a Præcipe quod reddat againſt S. who pleaded that R. was ſeiſed, and infeoffed him in Morgage upon condition of payment of certaine money at a day, and ſayd that R. payd the money at the day, and entred judgement of the writ: exception was taken to this plea, for that he ſhewed forth no Deed of the condition, and it was ruled that hee need not ſhew forth the Deed, for two cauſes. 1. That he ought not to ſhew any Deed to the Demandant, becauſe the Demandant is a ſtranger. 2. It might be when R. payd the money, and the condition performed, that the Deed was redelled to R. and thereupon the plea was adjudged good, and the writ abated. 11. E. 3. tit. Mon. des faits 175. 45. E. 3. 8.

If land be morgaged upon condition, and the Morgagee letteth the lands for yeares, reſerving a rent, the condition is performed, the Morgagor re-enters, in an action of debt brought for the rent, the Leſſee ſhall plead the condition and the re-entry without ſhewing forth any Deed. 45. E. 3. 8. b. Finch.

In an Aſſiſe the Tenant pleades a feoffment of the Anceſter of the Plaintife unto him, &c. the Plaintife ſaith that the feoffment was upon condition, &c. and that the condition was broken, and pleads a re-entry, and that the Tenant entred and tooke away the Cheſt in which the Deed was, and yet detaineth the ſame, the Plaintife ſhall not in this caſe bee enforced to ſhew the Deed. 10. H. 4. 9. b. 43. E. 3. Vid. 10. E. 3. 41. Simile in dower.

If a woman give lands to a man and his heires by Deed or without, generally, ſhe may in pleading averre the ſame to be Cauſa matrimonii prælocuti, albeit ſhe hath nothing in writing to prove the ſame, the reaſon whereof ſee Sect. 330. 12. E. 1. Feoffments & Faits 114. F. N. B. 105. b. 13. R. 2. Monſtrans des faits 165. 4. E. 4. 35. &c. 11. H. 7. 22. b. 6. H. 8. 8. 9. E. 4. 25, 26. 14. H. 8. 22. b.

¶ *Mes des chattels reals ſicome leaſe fait a volunt a terme des ans, &c.* This is apparent.

Sect. 366.

CItem coment que home en aſcun action ne poit pleder un Condition que toucha & concerna frank-tenement ſauns monſtrer eſcript de ceo, come eſt avantdit, uncore home poit eſtre aide ſur tiel condition per verdict de xii. hões

ALſo albeit a man cannot in any action pleade a condition which toucheth & concernes a freehold, without ſhewing writing of this, as is aforeſaid, yet a man may be aided upon ſuch a condition by the verdict of 12. men taken at large in an aſſiſe

¶ *Verdit or verdict de* 12. *homes.* Veredictum quaſi dictum veritatis, as Judicium eſt quaſi juris dictum. Et ſicut ad quæſtionem juris, non reſpondent juratores ſed judices: ſic ad quæſtionem facti non reſpondent judices ſed juratores. **For Jurors are to try the fact, and the Judges ought to judge according to the Law that riſeth upon the fact,** Lib. 8. fo. 155. Lib. 9. fo. 13. Lib. 11. fo. 10.

fact, for Ex facto jus oritur.

¶ *Prise a large.* There bee two kindes of verdicts; viz. one generall, and another at large or especiall. As in an Assise of Novel disseisin brought by A. against B. the Plaintife makes his plaint, Quod B. disseisivit eum de 20. acris terræ cum pertinentiis, the Tenant pleades, Quod ipse nullam injuriam seu disseisinam præfato A. inde fecit, &c. the Recognitors of the Assise doe finde Quod prædict. A. injuste & sine judicio disseisivit prædict. B. de prædict. 20. acris terræ cum pertinent' &c. This is a generall verdict. The like Law it is if they finde it negatively. And Littleton here putteth a case of a Verdict at large or a especiall Verdict, and it is therefore called a spectall Verdict or a Verdict at large, because they finde the spectall matter at large, and leave the judgment of Law thereupon to the Court, of which kinde of Verdict it is said, (l) Omnis conclusio boni & veri judicii sequitur ex bonis & veris præmissis & dictis Juratorum.

(l) Trin. 33. E. 1. Coram Rege Nott. in Thesaur.

And though Littleton here putteth his case of a Verdict at large upon a generall issue (which in the case hee puts it was necessary for the Tenant to pleade, yet when Issue is joyned upon some spectall point, the Jury, as shall bee said hereafter in this Section, may finde the spectall matter if it be doubtfull in Law, for as much doubt may arise upon one point upon the spectall issue as upon the generall issue. And as a spectall verdict may be found in Cõmon

43. Ass. 31. Stanf. pl. cor. 164. 165. 3. E. 3. coron. 284. 280. 287. 44. E. 3. 44. 41. E. 3. Coron. 451.

prise a large en Assise de Novel disseisin, ou en ascun auter action, lou les Justices voylent prender le verdict de xii. Jurors a large. Si come mittomus q̃ home seisie de certaine terre en fee, lessa meſm̃ la terre a un auter pur terme de vie sans fait, sur condition d̃ render al Lessor un certaine rent, & pur default de payment un re-entrie &c. per force de quel le lessee est seisie come de franktenement, & puis le rent est aderere, p̃ que le lessor enter en la t̃re, & puis le lessee arraign un Assise de Novel disseisin, de la terre envers le Lessor, le quel plead, q̃ il fist nul tort, ne nul disseisin, & sur ceo lassise soit prise, en cest case les Recognitors del assise poyent dire & render a les Justices lour verdict a large sur tout le matter, come adire que le defendant fuit seisie de la terre en son demeſn̄ come de fee, et illint seisie meſme la terre lesse al plaintife pur terme de sa vie, rendãt al lessour tiel annuel rent payable a tiel feast, &c. sur tiel condition, que si le rent fuit aderere a ascun tiel feast a que

of *Novel disseisin*, or in any other action where the Justices will take the verdict of 12. Jurors at large. As put the case, a man seised of certaine land in fee, letteth the same land to another for terme of life without deed upon condition to render to the Lessor a certaine rent, and for default of payment, a re-entrie, &c. by force whereof the lessee is seised as of freehold, and after the rent is behinde, by which the lessor entreth into the land, and after the lessee arraigne an Assise of *Novel Disseisin* of the land against the Lessor, who pleads that he did no wrong nor disseisin, and upon this the Assise is taken; in this case the Recognitors of the Assise may say and render to the Justices their verdict at large upon the whole matter, as to say that the defendant was seised of the land in his demesne as of fee, and so seised, let the same land to the Plaintife for terme of his life, rendring to the lessor such a yearely rent payable at such a feast, &c. upon such condition, that if the rent were behind at any such feast at which

doit

doit estre pay, donqes bien lirroit al Lessor dentrer, &c. per force ǒ quel lease le Plaintife fuit seisie en son demesne come de franktenement, & que puis apres le rent fuit aderere a tiel feast, &c. per que le Lessor entra en le terre sur le possession le Lessee & prieroit le discretion de les Justices, si ceo soit un disseisin fait al Plaintife ou nemy, donque pur ceo que appiert a les Justices, que ceo fuit nul disseisin fait al Plaintife, entant que lentrie de le Lessor fuit congeable sur luy; les Justices doyent doner judgement q̃ le plaintife ne prendra riens per son briefe dassise. Et issint en tiel cas l'Lessor serra aide, & uncore nul escripture unques fuit fait del condition. Car cibien que les Jurors poient aver conusance de le lease, auxybien il poient aver conusance de l'condition que fuit declare & rehearse sur le leas.

it ought to bee payd, then it should bee lawfull for the Lessor to enter, &c. by force of which lease the Plaintife was seised in his demesne as of freehold, and that afterwards the Rent was behinde at such a feast, &c. by which the lessor entred into the land upon the possession of the lessee, and prayed the discretion of the Justices if this bee a disseisin done to the Plaintife or not. Then for that it appeareth to the Justices that this was no disseisin to the plaintife, insomuch as the entrie of the Lessor was congeable on him; the Justices ought to give judgement that the plaintife shall not take any thing by his writ of Assise. And so in such case the lessor shall bee ayded, and yet no writing was ever made of the Condition. For aswell as the Jurors may have conusance of the lease, they also aswell may have conusance of the Condition which was declared & rehearsed upon the lease.

Pleas, so may it also bee found in Pleas of the Crowne, or criminall causes that concerne life or member.

¶ Verdict finding matter incertainely or ambiguously is insufficient and no judgement shall be given thereupon, as if an Executor plead Pleinment administre, and issue is joined thereupon, and the Jury finde, that the Defendant have goods within his hands to bee administred, but finde not to what value, this is uncertaine and therefore insufficient. 40.E.3.15. 20 E.3. amendment 57. 18.E.3.49. in Cessavit. 30.E.3.23. 7.H.4.39.

¶ Verdict that finds part of the issue, and finding nothing for the residue, this is insufficient for the whole, because they have not tryed the whole issue wherewith they are charged. As if an information of intrusion bee brought against one for intruding into a mesuage, and 100. acres of land, upon the generall issue the Jury finde against the Defendant for the land, but saith nothing for the house, this is insufficient for the whole, & so was it twice adjudged. (m) But if the Jury give a verdict of the whole issue, and of more, &c. that which is more is surplusage, and shall not (a) stay judgement, for Utile per inutile non vitiatur, but necessary incidents required by law, the Jury may find. 17.E.3.47. 18.E.3.48. 22.E.3.1.18.E.3.36. 15.E.3. Judgement 58. 2.H.5.3.7.H.6.5. 7.E.4.24 28.H.6.18.

(m) Hill.25.Eliz. in a writ of Error between Brace and the Queen in the Exchequer Chamber. Mich.28.& 29.Eliz. inter Gomersal & Gomersal in account in the Kings Bench.

(a) 32.E.3.Cessavit.25.

Vid. Sect. 484, 485.

¶ If the matter and substance of the issue bee found, it is sufficient as Littleton himselfe sayth hereafter.

Vid. Sect. 58. 13.E.3. garr. 26.15.E.3.Ass.322. 17.E.2.6.18.Ass.2. 35 Ass 8. (b 1.H.4.6.b.27.H.8.22 b Pl.Com.515.

Estoppells which bind the interest of the Land, as the taking of a Lease of a mans owne Land by Deed indented, and the like, being specially found by the Jury, the Court ought to judge according to the speciall matter, for albeit Estoppels regularly must be pleaded and relied upon by an apt conclusion, and the Jury is sworne ad veritatem dicendam, yet when they finde veritatem facti, they pursue well their oath, and the Court ought to adjudge according to Law. (b) So may the Jury finde a warranty being given in evidence, though it bee not pleaded, because it bindeth the right, unlesse it be in a Writ of Right, when the Mise is joyned upon the meere right.

Lib.4.fo.53 Raw'ins ca'e & ibid. Pledals case. H 1.31.Eliz. be weene Sutton & Digons in the Common place, the case of he Lease for years by Deed indented. 34.E.3.Droits 29.

(c) After

(c) After the verdict recorded, the Jury cannot vary from it, but before it be recorded they may vary from the first offer of their verdict, and that verdict which is recorded shall stand: also they may vary from a privy Verdict.

(c)7.R.2.Coron.108. Plo.Com.Fremans Case. 21.E.1.H.4.2. 20.Ass.12. 16.Ass.16.22 Ass.23. 5.H.7.22.

An issue found by Verdict shall always be intended true until it be reversed by attaint, and thereupon upon the attaint no Supersedeas is grantable by Law.

If the Jury after their evidence given unto them at the Barre, doe at their owne charges eat or drink either before or after they be agreed on their Verdict, it is finable, but it shall not avoyd the Verdict: but if before they be agreed on their Verdict, they eat or drink at the charge of the Plaintife, if the Verdict bee given for him, it shall avoyd the Verdict: but if it be given for the Defendant, it shall not avoid it, & sic è converso. (d) But if after they be agreed on their Verdict, they eat or drinke at the charge of him for whom they doe passe, it shall not avoyd the Verdict.

Pasch.24.H.8. of the Report of Justice Spilman in the Kings Bench. 11.H.4.17.35.H.6. Examin.17.29 H.8.37. Dyer. 35.H.8.35 4.& 5.Eliz. 218.14.H.7.1.20 H.7.3.

(d) Pasch.6.E.6. in the Common place.

(e) If the Plaintife after evidence given, and the Jury departed from the Barre, or any for him, doe deliver any Letter from the Plaintife to any of the Jury concerning the matter in Issue, or any Evidence, or any escrowle touching the matter in issue, which was not given in Evidence, it shall avoyd the Verdict, if it be found for the Plaintife, but not if it bee found for the Defendant, & sic è converso But if the Jury carry away any writting unsealed, which was given in evidence in open Court, this shall not avoyd their Verdict, albeit they should not have carryed it with them.

(e) 11.H.4.16.17. 3.Mar.Jurors Br.8. Vide Dyer ubi supra.

By the Law of England a Jury after their Evidence given upon the Issue, ought to bee kept together in some convenient place, without meate or drinke, fire or candle, which some Writers (f) call an imprisonment, and without speech with any, unlesse it be the Bailife, and with him onely if they be agreed. After they be agreed, they may in causes between party and party give a Verdict, and if the Court be risen, give a privy Verdict before any of the Judges of the Court, and then they may eat and drinke, and the next morning in open Court they may eyther affirme or alter their privy Verdict, and that which is given in Court shall stand. But in criminall cases of life or member, the Jury can give no privy Verdict, but they must give it openly in Court. And hereby appeareth another division of Verdicts viz. a publique Verdict openly given in Court and a privy Verdict given out of the Court before any of the Judges, as is aforesaid.

Pasch.6.E.6.ubi supra.

(f)24.E.3.75.

A Jury sworne and charged in case of life or member, cannot be discharged by the Court or any other, but they ought to give a Verdict. And the King cannot be Non-suit, for he is in Judgement of Law ever present in Court: but a common person may be Non-suit.

11.E.3.18.

¶ *En Assise de Novel disseisin ou en ascun auter action, &c.* Here it is to bee observed, That a speciall Verdict, or at large may be given in any Action, and upon any issue, be the Issue generall or speciall: and albeit there be some contrary opinions in our Bookes, yet the Law is now settled in this point.

W.2.cap.26 7.H.4.11. 8.H.4.29. 9.H.7.13. 33.H.8.tit.verdict. Br.85. 11.Eliz Dier.283 284. 3.E.3. Itinere North.284. 286.43 Ass.31 26.H.8.5. 44.E.3.44 Fitz.Coron. 244.Ass.17. 45 E.3.20 Pl.Com.92. 9.H.7.3.Vid.lib.9.12. 13.Dowmans case. And see there many other authorities.

¶ *Per que le Lessor entra.* Here it appeareth that the condition is executed by re-entry, and yet the Lessor after his re-entry shall not by the opinion of Littleton, plead the Condition without shewing the Deed, because hee was party and privy to the condition, for the parties must shew forth the Deed, unlesse it be by the act and wrong of his adversary, as hath been said, (m) but an estranger which is not privy to the condition, nor claymeth under the same, as in the cases abovesayd appeareth, shal not after the condition is executed in pleading, be inforced to shew forth the Deed: and by this diversity all the bookes and authorities in law which seeme to bee at variance are reconciled. See also for this matter the Section next following.

225.b 3 b 226.a'

(m) See more before in this chapter, Sect.365.

¶ *Les Recognitors del Assise poient dire, &c.* Here it appeareth that the Jurors may find the fact, albeit the Deed bee not shewed in evidence, and the rather for that the Condition upon the Livery (as hath been said) is good, albeit there be no Deed at all. *v. s.* 349.

10.Ass.p.9.21.Ass.28. 17.Ass 20 31.Ass.21. 33.Ass 2. 39.E.3.28. 44.E.3.22. 10.H.4.9.7 H. 5 5. 9.E 4.26. 18.E.4.12. 15.E.4.16.17. 11.H.7.22.

¶ *Et prieront le discretion des Justices.* That is to say, They (having declared the speciall matter) pray the discretion of the Justices, which is as much to say, as, That they would discerne what the Law adjudgeth thereupon, whether for the Demandant or for the Tenant: for as by the authority of Littleton, Discretio est discernere per legem, quid sit justum, that is, to discerne by the right line of law, and not by the crooked cord of private opinion, which the vulgar call Discretion: Si à jure discedas, Vagus eris, & erunt omnia omnibus incerta: and therefore Commissions that authorise any to proceed, secundum sanas discretiones vestras, is as much to say, as, Secundum Legem & consuetudinem Angliæ.

Lib.10.to.4.case de Sewers.

¶ *Car cibien come les Jurors poient aver connusance, &c.* Hereby it appeareth, That they that have Connusance of any thing, are to have Connusance also of all Incidents and Dependants thereupon, for an Incident is a thing necessarily depending upon another.

It

If a Deed bee made and dated in a forraine Kingdome, of lands within England, yet if Livery and Seisin be made secundum formam cartæ, the land shall passe, for it passeth by the Livery. 1.E.3.17.in Grayes case.

Section 367.

¶ En meisme le manner est de Feoffement en Fee, ou done en le Taile sur Condition, coment que nul escripture unque fuet fait de ceo. Et sicome est dit de verdict a large en Assise, &c. En meisme le manner est en briefe dentr̄ founde sur disseisin, & en touts auks actions, ou les Justices voylent prender le verdict a large p la ou tiel verdict a large est fait, la manner del entrie entire est mis en lissue, &c.

IN the same maner it is of a feoffment in Fee, or a Gift in taile, upon condition, although no Writing were ever made of it. And as it is sayd of a Verdict at large in an Assise, &c. In the same manner it is of a Writ of Entry founded upon a disseisin, & in all other Actions where the Justices will take the Verdict at large, there where such verdict at large is made, the manner of the whole entry is put in the Issue, &c.

¶ And it is to bee observed, That the Court cannot refuse a speciall verdict, if it be pertinent to the matter put in Issue. See the Section next preceding.

¶ *Verdict a large.*

It is called a verdict at large, because it findeth the matter at large, and leaves it to the judgment of the Court: or it is called a speciall verdict, because it findeth the speciall matter, &c. So as hereby it appeareth, That a Verdict (as hath beene said) is twofold, viz a Verdict at large, or a speciall Verdict, (which is all one) whereof Littleton here speaketh; and a generall Verdict that is generally found according to the issue, as if the Issue be not guilty, to finde the party guilty or not guilty generally, & sic de cæteris. There is also a Verdict given in open Court, and a private Verdict given out of Court, before any of the Judges of the Court, so called, because it ought to bee kept secret and privy from each of the parties, before it be affirmed in Court.

See the Section next following.

See the next preceding Section.

Sect. 368.

¶ Item en tiel case lou Lenquest poit dire lour verdict a large, sils voilent p̄nō sur eux le Conusance de la ley sur le matter, ils poyent dire lour verdict general nent, come est mis en lour charge, cōe en le case avantdit, ils poient bien dire, que le Lessor ne disseisa pas le Lessee, sils voilent, &c.

ALso in such case where the Enquest may give their verdict at large, if they will take upon them the knowledge of the Law upon the matter, they may give their verdict generally as is put in their charge, as in the case aforesayd they may well say, That the lessor did not disseise the Lessee, if they will, &c.

¶ Although the Jury if they will take upon them (as Littleton here saith) the knowledge of the law, may give a generall verdict, yet it is dangerous for them so to do, for if they do mistake the law, they run into the danger of an Attaint, therefore to find the speciall matter is the safest way where the case is doubtfull.

Sect.

Sect. 369.

¶ *PUR ceo que il nad aſcun eſcripture de ceo.* Hereby it alſo appeareth, That albeit the Condition was executed by re-entrie, yet the Leſſor cannot plead it without ſhewing of a Deede. But of this matter ſufficient hath beene ſayd before in the two next preceding Sections.

¶ *Quel eſt bone plea en Barre.* In a caſe where there have beene ſome variety of opinions in our Bookes, Littleton here cleareth the doubt, and that upon a good ground. For hee himſelfe reporteth in our Bookes, That it was holden by all the Juſtices of England, That a Leaſe for life, the reverſion to the Plaintife, was a good barre in an Aſſiſe, and alſo that a Leaſe for yeares, the reverſion to the Plaintife, might bee pleaded in an Aſſiſe: and ſo of a Freehold in Fee with warrantie. And herein the diverſitie of pleading is to bee obſerved, for in the caſe here put by Littleton of a Leaſe for life, the Tenant ſhall pleade it in Barre. But in a caſe of a Leaſe for yeares

18.E.4.10.12.Aſſ.38.
10.Aſſ.16.26.H.6.Bar.9.
38.Aſſ.26.4.31.Aſſ.26.
39.Aſſ.3.43.Aſſ.18.
44.Aſſ.3.18.E.3.Aſſ.77.
31.E.3.ibid.97.18.Aſſ.22.

4.El.Dver 207.
8.Eliz.Dyer 245.

¶ Item en meſme le caſe ſi l'caſe fuit tiel, que apres ceo que le Leſſor avoit enter pur default de payment, &c. que le Leſſee uſt enter ſur le Leſſor & luy diſſeiſiſt, en ceſt caſe ſi le Leſſor arraigne un Aſſiſe envers l'Leſſee, le Leſſee luy puit barre de laſſiſe. Car il poit pleader envers luy ẽ bar, coment le Leſſor que eſt Plaintife fiſt un leaſe al Defendant pur terme de ſa vie, ſavant le reverſion al Plaintife, quel eſt bone plea en Barre, entant que il conuſt l'reverſion eſtre al Plaintife, en ceſt caſe le Plaintife nad aſc̃ matt̃ de luy ayd̃ forſque le condition fait ſur le Leas, & ceo il ne poet pleader pur ceo que il nad aſcun eſcripture de ceo. Et entant que il ne poet reſponder al bart̃, il ſerra bart̃. Et iſſint en ceſt caſe poyes veier que home eſt diſſeiſie, & uncore ill navera Aſſiſe. Et uncore ſi le Leſſee ſoit Plaintife, & le Leſſor Defendant, il barrera le Leſſee per verdict daſſiſe, &c. Mes en ceſt caſe lou le Leſſee eſt Defendant, ſi il ne voit̃ pleade le dit plea en Barre, mes pleade nul tort, nul diſſeiſin, donc̃s le leſſor recouera Aſſiſe, Cauſa qua ſupra.

ALſo in the ſame caſe, if the caſe were ſuch, That after that, that the Leſſor had entred for default of payment, &c. that the Leſſee had entred upon the Leſſor, and him diſſeiſed; in this caſe if the Leſſor arraign an Aſſiſe againſt the Leſſee, the Leſſee may barre him of the Aſſiſe: for hee may pleade againſt him in bar, how the leſſor who is Pl', made a leaſe to the defen. for term of his life, ſaving the Reverſion to the Pl', which is a good plea in bar inſomuch as he acknowledges the reverſion to be to the Pl'. In this caſe the plaintif hath no matter to ayd himſelfe but the conditiõ made upon the leaſe, & this he cãnot plead, becauſe he hath not any writing of this: and inaſmuch as hee cannot anſwer the bar, he ſhalbe barred. And ſo in this caſe you may ſee that a man is diſſeiſed, & yet he ſhal not have aſſiſe. And yet if the leſſee be pl' and the leſſor def. he ſhall bar the leſſee by verdict of the Aſſiſe, &c. but in this caſe where the Leſſee is def. if he will not plead the ſaid plea in bar, but plead *nul tort, nul diſſ.* then the leſſor ſhall recover by aſſiſe, *Cauſa qua ſupra.*

yeares, or of an eſtate of Tenant by Statute or Elegit, the defendant ſhall not plead in bar, as to ſay, Aſsiſa non,&c. but juſtifie by force of the Leaſe,&c. and conclude, & iſsint ſans tort. And if the Tenant of the Freehold be not named, he ſhall plead Nul tenant de franktenement noſme en le briefe: and in the caſe of the feoffment with warranty, he muſt rely upon the warranty.

Sect. 370.

¶ ITem, pur ceo q̄ tielx conditions ſont plus communement mis & eſpecifies en faits endentes, aſcun petit choſe ſerra icy dit (a toy mon fits) de endenture & de fait Poll concernāts conditiōs. Et eſt aſcavoir, que ſi lendēture ſoit bipartite, ou tripartite, ou quadripartite, touts les partes de lendenture ne ſont q̄ un fait en ley, & chescun part de lendenture eſt de auxy grande force & effect, ſicome touts les parts enſemble.

AND for that ſuch Conditions are moſt commonly put and ſpecified in Deeds indented, ſomewhat ſhall be here ſaid (to thee my ſonne) of an Indenture, and of a Deed Poll concerning Conditions. And it is to be underſtood, that if the Indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture are but one Deed in Law, and every part of the Indenture is of as great force and effect as all the parts together be.

¶ *EN faits endentes.* Vide Sect.217. Thoſe are called by ſeverall names, as Scriptum indentatum, carta indentata, Scriptura, indentata, Indentura Literæ indentatæ. An Indenture is a writing containing a Conveyance, Bargaine, Contract, Covenants or Agreements betweene two or more, and is indented in the top or ſide anſwerable to another that likewiſe comprehendeth the ſelf ſame matter, & is called an Indenture, for that it is ſo indented, & is called in Greeke συμγραφον.

If a deed beginneth, Hæc Indentura, &c. and in troth the Parchment or Paper is not indented, this is no indenture, becauſe words cannot make it indented. But if the deed be actually indented, & there be no words of Indenture in the Deed, yet it is an Indenture in law, for it may be an Indenture without words, but not by words without indenting. Lib.5.fo.20.Stiles caſe.

¶ *En faits indent.* And here it is to be underſtood that it ought to be in Parchment or in Paper. For if a writing be made upon a peece of wood, or upon a peece of Linnen, or in the barke of a tree, or on a ſtone, or the like, &c. and the ſame be ſealed or delivered, yet is it no Deed, for a Deed muſt be written either in Parchment or Paper as before is ſaid, for the writing upon theſe is leaſt ſubject to alteration or corruption. 14.E.3.Lev 79. 4.E.2.Fines 116. 4.E.2.Lev 68. 2.R.2. Det.4. 27.H.6.9. F.N.B.122 I.

¶ *Si lendenture ſoit bipartite, ou tripartite, ou quadripartite, &c.* Bipartite is when there be two parts and two parties to the Deed. Tripartite, when there are three parts and three parties, and ſo of Quadripartite, Quinquepartite, &c.

¶ *Et de fait poll.* A Deed poll is that which is plaine without any indenting, ſo called, becauſe it is cut even or polled, every deed that is pleaded ſhall be intended to be a deed poll, unleſſe it be alledged to be indented.

¶ *Touts les parts del endenture ne ſont que un en ley.* If a man by deed indented, make a gift in taile, and the Donee dyeth without iſſue, that part of the Indenture which belonged to the Donee doth now belong to the Donor, for both parts doe make but one Deed in Law. 38.H.6.24,25. 9.H.6.35. 35.H.6.34. 9.E.3.18. 9.E.4.18. Pl.Com.133.

¶ *Et chescun part del Indenture eſt de auxy grand force, &c.* This is manifeſt of it ſelfe, and is proved by the Bookes aforeſaid.

It is to be obſerved, that if the Feoffor, Donor, or Leſſor ſeale the part of the Indenture belonging to the Feoffee, &c. the Indenture is good, albeit the Feoffee never ſealeth the Counterpart belonging to the Feoffor, &c.

Sect. 371.

ET feasance de Indenture est en deux maners. Un est de faire eux en le tierce person. Un auter est de faire eux en le primer person. Le feasance en le tierce person est come en tiel forme.

Hæc Indentura facta inter R. de P. ex una parte, & V. de D. ex altera parte, Testatur, quod prædictus R. de P. dedit & concessit, & hac præsenti carta indentata confirmavit præfato V. de D. talem terram, &c. Habendum & tenendum, &c. sub conditione, &c. In cujus rei testimonium partes prædictæ sigilla sua præsentibus alternatim apposuerunt. *Vel sic:* in cujus rei testimonium uni parti hujus Indenturæ penes præfatum V. de D. remanenti, prædict' R. de P. sigillum suum apposuit, alteri verò parti ejusdem Indenturæ penes R. de P. remanēti idem V. de D. sigillum suum apposuit. Dat' &c.

Tiel Endenture est appel endenture fait en le tierce person, pur ceo que les Verbes, &c. sont en la tierce person. Et tiel forme dendentures est de plus sure feasance, pur ceo que est pluis communement use, &c.

AND the making of an Indenture is in two manners. One is to make them in the third person. Another is to make them in the first person. The making in the third person is as in this forme.

This Indenture made between R. of P. of the one part, and V. of D. of the other part, Witnesseth, that the sayd R. of P. hath granted, and by this present Charter indented, confirmed to the aforesaid V. of D. such Land, &c. To have and to hold, &c. upon Condition, &c. In witnesse whereof the parties aforesaid to these presents, interchangeably have put their Seales. Or thus: *In witnesse whereof to the one part of this Indenture, remaining with the said V. of D. the said R. of P. hath put his seale, and to the other part of the same Indenture remaining with the said R. of P. the said V. of D. hath put his Seale. Dated &c.*

Such an Indenture is called an Indenture made in the third person, because the Verbes, &c. are in the third person. And this forme of Indentures is the most sure making, because it is most commonly used, &c.

9 E.3.18. Vide the Books afore cheated.

ET *le feasance del Indēture est en deux maners, &c.* Here is another of our Authors perfect divisions. In this and the next Section following Littleton doth illustrate his meaning, by setting downe formes and examples, which doe effectually teach.

Vide 40.E.3.2. 7.H.7.14. Dyer 28.H.8.19.Lib.2. fol.4.&5.Godards case.

In these two formes there are to be observed (amongst other) three generall parts of the same, viz. the Premises, the Habendum and the In cujus rei testimonium. But hereof hath bin spoken at large, Sect. 1.4 & 40. for Littleton speaketh not here of the delibery, but only of the Content or words of the Deed.

¶ *Pur ceo que est le pluis communement use.* Here it appeareth that that which is most commonly used in Conveyances is the surest way. A communi observantia non est recedendum, & minime mutanda sunt quæ certam habuerunt interpretationem. Magister rerum Usus. It is provided by the Statute of 38.E.3.cap.4. that all penall Bonds in the third person

17.Eliz.Dyer 342. 1.R.3. 14.H.6.28.Bab.12.H.4. 12. 30.Ass.31.

person be voyd and holden for none, wherein some of our Books (d) seeme to differ, but they being rightly understood, there is no difference at all. For the Statute is to be intended of Bonds taken in other Courts out of the Realme, and so it appeareth by the preamble of that Act. And it was principally intended of the Courts of Rome, and so it appeareth by Justice Hankford, in 2. H. 4. in which Courts Bonds were taken in the third person, so as such Bonds made out of the Realme, are voyd, but other bonds in the third person, are resolved to bee good, as well as indentures in the third person, by the opinion of the whole Court in 8. E. 4. 4. (d) 40. E. 3. 1. 2. H. 4. 10. 8. E. 4. 5.

Sect. 372.

CLe feasance de Indenture en le primer person est come en tiel forme. Omnibus Christi fidelibus ad quos præsentes literæ indentatæ pervenerint, A. de B. salutem in Domino sempiternam. Sciatis me dedisse, concessisse, & hac presen' carta mea indentata confirmasse C. de D. talem terram, &c. *Vel sic:* Sciant præsentes & futuri, quod ego A. de B. dedi, concessi, & hac præsenti carta mea indentata confirmavi C. de D. talem terram, &c. Habendum & tenendum, &c. sub conditione sequenti, &c. In cujus rei testimonium tam ego præd' A. de B. quam prædict' C. de D. his Indenturis sigilla nostra alternatim opposuim'. *Vel sic:* In cujus rei testimonium ego præfatus A. uni parti hujus Indenturæ sigillum meum apposui, alteri verò parti ejusdem Indenturæ prædict' C. de D. sigillum suum apposuit, &c.

THe making of an Indenture in the first person is, as in this forme. *To all Christian people to whom these presents indented shall come, A. of B. sends greeting in our Lord God everlasting. Know ye me to have given, granted, and by this my present Deed indented, confirmed to C. of D. such land, &c.* Or thus: *Know all men present and to come, that I A. of B. have given, granted, and by this my present Deed indented, confirmed to C. of D. such land, &c. To have and to hold, &c. upon Condition following, &c. In witnesse whereof, as well I the said A. of B. as the aforesaid C. of D. to these Indentures have interchangeably put our Seales.* Or thus: *In witnesse whereof I the aforesaid A. to the one part of this Indenture have put my Seale, & to the other part of the same Indenture, the said C. of D. hath put his Seale, &c.*

CHere Littleton sets downe three formes of deeds indented in the first person, Brevis via per exempla, longa, per præcepta. It is requisite for every Student to get Presidents and approved formes, not onely of deeds according to the example of Littleton, but of Fines, and other Conveyances, and Assurances, and especially of good and perfect pleading, and of the right entries, and formes of Judgments, which will stand him in great stead, both while he studies, and after when he shall give counsell. It is a safe thing to follow approved presidents, for Nihil sinul inventum est, & perfectum. Vide Sect. 371.

Sect. 373.

CEt il semble que tiel endenture que est fait en le primer person est auxy bone en la

AND it seemeth that such Indenture which is made in the first person is as good in law as the

ley, ſicome lendenture fait en le tierce perſon, quant ambideux parties ont a ceo miſe lour ſeals, car ſi en lendenture fait en l'tierce perſon, ou en le primer perſon, mention ſoit fait que le grantor avoit miſe ſolement ſon ſeale, & nemy le grauntee, donques eſt lendenture tantſolement le fait l'grauntor. Mes lou mention eſt fait que le grauntee ad mis ſon ſeale a lendenture, &c. donques eſt lendenture auſſibien le fait le grantee come le fait le grauntor. Iſſint il eſt le fait dambideux, & auxy cheſcun part de lendenture eſt le fait dambideux parties en tiel caſe.

Indenture made in the third perſon, when both parties have put to this their ſeales, for if in the Indenture made in the third perſon, or in the firſt perſon, mention be made that the grantor onely hath put his ſeale, and not the grantee, then is the Indenture onely the deed of the grantor. But where mention is made that the grantee hath put to his ſeal to the Indenture, &c. then is the Indenture as well the deed of the grantee as the deed of the grantor. So is it the deed of them both, and alſo each part of the Indenture is the deed of both parties in this caſe.

THere is to be obſerved, that albeit the words in this Indenture be onely the words of the Feoffor, yet if the Feoffee put his Seale to the one part of the Indenture, it is the Deed of them both. And in this ſpeciall caſe to make it the Deed of the Feoffee, it appeareth by Littleton, that mention muſt be made in the Deed, that hee hath put to his Seale, for that he is no way made party to make it, being made in the firſt perſon, but only by the claule of putting his Seale thereunto. Otherwiſe it is of a deed indented in the third perſon, as before it appeareth, for there he is made party to the Deed in the beginning. And Littletons rule is true, that every part of an Indenture is the Deed of both parties, for as it hath been ſaid, both parts make but one deed in Law in that caſe.

Sect. 374.

¶ *Or certain condition, &c.* Here by this (&c.) is implyed that the condition in this caſe doth extend both to the eſtate for life, and to the remainder, but by ſpeciall limitation it may extend to any one of them, and not to the other. And albeit he in the remainder be no party to the Indenture (the parties thereunto only being the Leſſor and the Tenant for life) yet when he in the remainder entreth and agreeth to have the lands by force of the Indenture, he is bound to performe the conditions contained in the In-

ITem ſi eſtate ſoit fait p Indenture a un home pur terme de ſa vie, le remainder a un auter en fee ſur certaine condition, &c. & ſi le tenant a term d vie avoit mis ſon ſeale al part de lendenture, & puis morust, & il que eſt en le remainder ent en la terre per force de ſon remainder, &c. en ceſt cas il eſt tenus de perfourner touts les conditiõs compriſe en

ALſo if an eſtate bee made by Indenture to one for terme of his life, the remainder to another in fee upon a certaine condition, &c. and if the tenant for life have put his ſeale to the part of the Indenture, and after dieth, and he in the remainder entreth into the land by force of his remainder, &c. In this caſe he is tyed to performe all the conditions compriſed

lendenture, ſi come le tenant a terme de vie, devoit faire en ſa vie, & uncore cestuy en le remainder ne unqs enſeal aſcun part del endenture. Mes la cauſe eſt, que entant que il enter & agreea aver les terres per force del endenture, il eſt tenus de performer les conditions deins meſme lendenture ſil voile aver la terre, &c.

in the Indenture, as the tenant for life ought to have done in his life time, and yet hee in the remainder never ſealed any part of the Indenture. But the cauſe is, for that in aſmuch as hee entred and agreed to have the lands by force of the Indenture, hee is bound to performe the conditions within the ſame Indenture if hee will have the land, &c.

denture. And here is alſo a diverſity to be underſtood that any eſtranger to the Indenture may take by way of remainder, but he cannot in this caſe take any preſent eſtate in poſſeſſion, becauſe he is an eſtranger to the Deed.

If A. by Deed indented between him and B. letteth lands to B. for life, the remainder to C. in fee reſerving a rent, tenant for life dieth, he in the remainder entreth into the lands, he ſhall be bound to pay the rent, for the cauſe and reaſon before yeelded by Littleton: An Indenture of 50.E.3.22. 3.H.6.26.b.

Leaſe is ingroſſed between A. of the one part, and D. and R. of the other part, which purporteth a demiſe for yeares by A. to D. and R. A. ſealeth and delivereth the Indenture to D. and D. ſealeth the Counterpane to A. But R. did not ſeale and deliver it. And by the ſame indenture it is mentioned, that D. and R. did grant to be bound to the plaintife in 20. pound in caſe that certaine conditions compriſed in the indenture were not performed. And for this 20. pound A. brought an action againſt D. only, and ſhewed forth the Indenture. The Defendant pleaded that it is proved by the Indenture that the demiſe by Indenture was made to D. & R. which R. is in full life and not named in the writ, Judgment of the writ. The Plaintife repiped, that R. did never ſeale and deliver the indenture, & ſo his writ was good againſt D. ſole. And there the counſell of the Plaintife tooke a diverſity betweene a rent reſerved which is parcell of the leaſe, and the land charged therewith, and a ſumme in groſſe, as here the twenty pound is, for as to the rent they agreed that by the agreement of R. to the leaſe, he was bound to pay it, but for the 20. pound that is a ſumme in groſſe, and collaterall to the Leaſe, and not annexed to the land, and groweth due onely by the deed, and therefore R. ſaid he was not chargeable therewith, for that he had not ſealed and delivered the Deed. But in aſmuch as he had agreed to the leaſe which was made by indenture, he was chargeable by the indenture for the ſame ſumme in groſſe, and for that R. was not named in the writ, it was adjudged that the writ did abate. 38.E.3.8.2. 3.H.6.26.b. Vide 45.E.3.11.12.

¶ *Aver la terre, &c.* Here is implyed an ancient maxime of the Law, viz. Qui ſentit commodum ſentire debet & onus, Et tranſit terra cum onere. Max:

Sect. 375.

Item ſi feoffment ſoit fait p fait Poll ſur condition, & p ceo q̄ l' condition neſt pas performe, le feoffor entra & happa la poſſeſſion de le fait Poll, ſi le feoffee port un action de cel entry envers le feoffor, il ad eſte queſtion ſi le feoffor poit pleder le condition per le dit fait Poll encounter le feoffee. Et aſcuns ont dit que non, entant que il

ALſo if a feoffment bee made by deed Poll upon condition, and for that the condition is not performed, the feoffor entreth and getteth the poſſeſſion of the deed Poll, if the feoffee brings an action for this entrie againſt the feoffor, it hath beene a queſtion if the feoffor may plead the condition by the ſaid deed Poll againſt the feoffee. And ſome have ſaid

ſemble a eux que un fait Poll, & le propertie de meſme le fait appertient a celuy a que le fait eſt fait, & nemy a celuy que fiſt le fait. Et entant que tiel fait ne attient al feoffor, il ſemble a eux que il ne poit pas ceo pleder. Et auters ont dit le contrarie, & ont monſtre divers cauſes. Un eſt, ſi le caſe fuit tiel, que en action perenter eux, ſi le feoffee pleder meſme le fait & monſtre eſt al Court, en ceſt cas entant que le fait eſt en Court, le feoffor poit monſtrer al court coment en le fait ſont divers conditions deſtre perfoꝛmes de le part le feoffee, &c. & pur ceo que ils ne fueront perfoꝛmes, il enter, &c. & a ceo il ſerra reſceive. per ñ le reaſon quant le feoffoꝛ ad le fait en poigne, & ceo monſtra a le court, il ſerra bien reſceive de ceo pleder, &c. & noſment quant le feoffoꝛ eſt prıvy al fait, car covient eſtre prıvy al fait quant il fiſt le fait, &c.

he cannot, inaſmuch as it ſeemes unto them that a deed Pol & the property of the ſame deed belongeth to him to whom the deed is made, and not to him which maketh the deed. And inaſmuch as ſuch a deed doth not appertain to the feoffor, it ſeems unto them that he cannot plead it. And others have ſaid the contrary, and have ſhewed divers reaſons: one is, If the caſe were ſuch that in an action betweene them if the feoffee plead the ſame deed, and ſhew it to the Court, in this caſe inſomuch as the deed is in court, the feoffor may ſhew to the Court how in the deed there are divers conditions to bee perfoꝛmed of the part of the feoffee, &c. and becauſe they were not performed, he entred, &c. and to this he ſhall be received. By the ſame reaſon when the feoffor hath the deed in hand, & ſhew this to the court, he ſhall well be receiued to pleade it, &c. and namely when the feoffor is privie to the fait, for he muſt be privie to the deed when he makes the deed, &c.

(a) Vide Sect. 170. 302. 340

CHEr the latter opinion is cleere Law at this day, and is Littletons own opinion (a) as befoꝛe hath beene obſerved.

¶ *Ont monſtre divers cauſes.*

Fœlix qui potuit rerum cognoſcere cauſas.
Et ratio melior ſemper prævalet.

24 E.3.73. 45.E.3. Monſtrans des faits 55. (b) 40.Aſſ.34. lib.5.75.b. Wymarks caſe. (c) 12.H.4.8. 42.E.3.27. Wymarks caſe, ubi ſupra. 38.H.6.2. 41.Aſſ.29. 12.H.4.8. 7.H.4.39. 21.H.4.73. 45.E.3.11. F.N.B.243.

¶ *Entant que le fait eſt en Court, &c.* And herewith doe agree (b) many Authoꝛities in Law. (c) And if the Deed remaine in one Court, it may be pleaded in another Court without ſhewing foꝛth, Quia lex non cogit ad impoſsibilia.

¶ *De part le feoffee, &c.* Here alſo is implyed if the condition be to be perfoꝛmed on the part of the Feoffoꝛ oꝛ by a ſtranger, and it is to be underſtood, that when a Deed is ſhewed foꝛth to the Court, the Deed ſhall remaine in Court all that Tearm in the cuſtody of the Cuſtos brevium, but at the end of the Tearme (if the Deed be not denied) then the Law adjudgeth the Deed in the cuſtody of the party to whom it belongeth, foꝛ a mans evidences are as it were the ſinewes of his land. But if the Deed be denied, then the deed in judgement of Law remaineth in Court untill the plea be determined. The reſidue of this Section needeth no explication.

Sect.

Sect. 376.

CAury ſi deux homes font un treſpas a un auter, le quel releaſe a un d eux per ſō fait, touts actions perſonals, & nient obſtant il ſuiſt action d treſpas envers lauter, le defendant bien poit monſtrer que le treſpaſſe fuit fait per luy & per un auter ſon companion, & que le Plaintife per ſon fait q̄l monſtre avant releſſa a ſon companion touts actions perſonals, judgment ſi action, &c. Et uncore tiel fait appertient a ſon companion, & nemy a luy, mes pur ceo que il poit aver advantage p le fait ſi doit monſtrer le fait al Court, il poit ceo biē pleder, &c. Per meſme le reaſon poit le feoffor en lauter cas quant il doit aver advantage per le condition compris deins le fait Poll.

ALſo if two men doe a treſpaſſe to another, who releaſes to one of them by his Deed all actions perſonals, and notwithſtanding ſueth an action of treſpaſſe againſt the other, the defendant may well ſhew that the treſpaſſe was done by him, and by an other his fellow, and that the Plaintife by his deed (which he ſheweth forth) releaſed to his fellow all actions perſonals, and demand the judgement, &c. and yet ſuch deed belongeth to his fellow, and not to him, but becauſe hee may have advantage by the deed if hee will ſhew the Deed to the Court, hee may well plead this, &c. by the ſame reaſon may the feoffor in the other caſe when he ought to have advantage by the condition compriſed within the Deed Poll.

¶ *Si deux homes font un treſpaſſe a un auter, &c.* Here by this Section it is to bee underſtood that when divers doe a treſpaſſe, the ſame is Joynt or Severall at the will of him to whom the wrong is done, yet if he releaſe to one of them, all are diſcharged, becauſe his owne Deed ſhall be taken moſt ſtrongly againſt himſelfe, but otherwiſe it is in caſe of appeale of death, &c. as if two men bee joyntly and ſeverally bounden in an Obligation, if the Obligee releaſe to one of them, both are diſcharged, and ſeeing the Treſpaſſers are parties and privies in wrong, the one ſhall not plead a Releaſe to the other without ſhewing of it forth, albeit the Deed appertaine to the other.

27.E.3.83. 23.E.4.2. 15.E.4.26. 21.E.4.72. 22.E.4.7. 8.H.6.15. 20.H.6.41. 21.H.6. Arbitrement 41. 2.R.3.9.a. 14.H.8.10. 34.H.8.tit. Eſtrange al fait 21. 3.H.6.18.26.

If an action of debt upon an Obligation bee brought againſt an heire, he may pleade, in barre a Releaſe made by the Obligee to the Executors. But albeit the Deed belong to another, yet muſt he ſhew it forth, for both of them are privie to the Teſtator.

13.E.2.tit. Monſtrans des faits 42.

¶ *Per meſme le reaſon.* Ubi eadem Ratio, ibi idem Jus.

Sect. 377.

CAury ſi le feoffee donaſt ou grātaſt le fait Poll al feoffor, tiel grant ſerra bone, & donques le fait & le propertie del

ALſo if the feoffee granteth the deed to the feoffor, ſuch grāt ſhall bee good, and then the deed and the property therof belongeth

¶ *Le property del fait appertient al feoffor.* Hereby it appeareth that a man may give or grant his Deed to another, and ſuch a grant by Paroll is good.

And

214. a

And it is also implyed, That if a man hath an Obligation, though hee cannot grant the thing in Action, yet hee may give or grant the Deed, viz. the Parchment and Waxe to another, who may cancell and use the same at his pleasure.

¶ *Serra pluis toſt entend' que il vient al fait per loyall meane, que per tortious meane.* Omnia præsumuntur legitimè facta, donec probetur in contrarium. Injuria non præsumitur.

¶ Quære de dubiis. There be three kinds of unhappy men.

1 Qui scit & non docet, hee that hath knowledge and teacheth not.

2 Qui docet & non vivit, hee that teacheth and liveth not thereafter.

3 Qui nescit, & non interrogat, he that knoweth not, and doth not enquire to understand. Therefore Littleton saith, Quære de dubiis.

fait appertient al Feoffor, &c. Et qñt le Feoffor ad le Fait en poigne, & est plead al court, il serra plus toſt entendue que il vient al Fait per loyal meane, que per tortious meane. Et issint a eux semble que le Feoffor poet bien pleder tiel fait polle que compient condition, &c. sil ad le fait en poigne. Ideo semper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.

to the feoffor, &c. and when the feoffor hath the deed in hand, and is pleaded to the Court, it shall be rather intended that he commeth to the Deed by lawful meanes, than by a wrongfull meane: and so it seemeth unto them, That the feoffor may well plead such deed pol which compriseth the condition, &c. if he hath the same in hand. *Ideo semper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.*

Infœlix cujus nulli sapientia prodest.
Infœlix qui recta docet, cum vivit inique.
Infœlix qui pauca sapit spernitque doceri.

¶ Quia per rationes pervenitur ad legitimam rationem. For Ratio est Radius divini Luminis. And by reasoning and debating of grave learned men the darkenesse of ignorance is expelled, and by the light of legall Reason the Right is discerned, and thereupon Judgment given according to law, which is the perfection of Reason. This is of Littleton here called Legitima ratio, whereunto no man can attaine but by long studie, often conference, long experience, and continuall observation.

Certaine it is, that in matters of difficulty the more seriously they are debated and argued, the more truely they are resolved, and thereby new inventions justly avoyded.

Inter cuncta leges, & percunctabere Doctos.

Sect. 378.

¶ *Condition en ley &c.* Littleton having spoken of conditions in Deed, now according to his own division commeth to speak of conditions in law.

¶ *Que ne soit ſpecifie en Escript.* A Condition in Law is that which the Law intendeth or implyeth without expresse words in the Deed.

¶ Estates que homes ont sur condition en ley, sont tiels estates que ont un condition per la ley a eux anner, coñt que ne soit speciste en escript. Sicome hõe grant per son fait a un auter office de

Estates which men have upon condition in Law, are such Estates which have a Condition by the law to them annexed, albeit that it be not specified in writing. As if a man grant by his Deed to another the Par-

Parkership de un park a aũ ꝑ occupier meſme loffice pur terme de ſon vie, leſtate que il ad en loffice eſt ſur condition en ley, ceſtaſcavoir, que le parker bien ꝑ loyalment gardera le park, ꝑ ferra ceo q̃ a tiel office appertiẽt a faire, ou autrement bien lirroit al grauntor ꝑ a ſes heires de luy ouſte, ꝑ de grant ẽa un auter ſil voit, ꝛc. Et tiel condition que eſt entendus per la ley eſtre annexe a aſcun choſe, eſt aury fort ſicome la condition fuiſſoit mis en eſcript.

the office of Parkerſhip of a Park, to have and occupie the ſame office for terme of his life, the eſtate which he hath in the office is upon Condition in Law, to wit, that the Parker ſhall well and lawfully keepe the Parke, and ſhall doe that which to ſuch office belongeth to doe, or otherwiſe it ſhall be lawfull to the grantor, and his heires to ouſt him, and to grant it to another if he will, &c. And ſuch condition as is intended by the Law to be annexed to any thing, is as ſtrong as if the condition were put in writing.

¶ *Que le Parker bien & loyalmẽt garderale Parke, &c.* Parke, this ſhould be written Parque which is a French word, and ſignifieth that which we vulgarly call a Parke, of the French verbe Parquer, to impark, to incloſe. It is called in Domeſday, Parcus. In law it ſignifieth a great quantity of ground incloſed, priviledged for wild beaſts of chaſe by preſcription, or by the Kings grant.

The beaſts of Parque, or chaſe properly extend to the Bucke, the Doe, the Fox, the Matron, the Roe, but in a common and legall ſenſe, to all the beaſts of the Foreſt. There be both Beaſts and Fowles of the warren. Beaſts, as Hares, Conies, and Roes, called in Records (d) Capreoli. Fowles of two ſorts, viz. Terreſtres and Aquatiles, Terreſtres of two ſorts, Silveſtres and Campeſtres: Campeſtres as Partridge, Quaile, Raile, ꝛc. Silveſtres, as Pheſant, woodCocke, ꝛc. Aquatiles, as Mallard, Herne, ꝛc. whereof I have ſeen this Record. (*) Rex conceſsit Johanni de Beverly Armiro ſuo quod ipſe cum quibuſcunque canibus ſuis ad quaſcunque beſtias feras Regis in quibuſcunque foreſtis, parcis ſuis quotieſcunque voluerit venari poſsit, & quoſcunque Falcones poſsit permittere volare ad quaſcunque aves de Warrena in quibuſcunque ripariis, &c.

(d) Hill. 13.E.3. coram Rege in Theſaur.

(*) 38.E.3.rot. patent pars 1.m.10.

It is reſolved (e) by the Juſtices and the Kings Counſell, that Capreoli, id eſt, Roes, non ſunt Beſtiæ de Foreſta, eo quod, fugant alias feras. Beaſts of Foreſts, be properly Hart, Hind, Buck, Hare, Boare and Wolfe, but legally all wild beaſts of Venery.

(e) Hill. 13.E.3. coram Rege in Theſaur.

A Foreſt and Chaſe are not, but a parke muſt be incloſed. The Foreſt and Chaſe do differ in Offices and Lawes: every Foreſt is a chaſe, but every Chaſe is not a Foreſt. A ſubject may have a Foreſt by eſpeciall grant of the King, as the Duke of Lancaſter, and Abbot of Whithie had. & ỹ Marqueſſe of Hartford & his anceſtors ỹ Forreſt of Savernack by Marlbrough com Wilts.

Vide Sect. 1.

Ockam cap. quid Regis Foreſta, ſaith, Foreſta eſt tuta ferarum manſio non quarumlibet, ſed ſilveſtrium, non quibuſlibet in locis, ſed certis, & ad hoc idoneis, unde Foreſta E. mutata in O. Quaſi fereſta, hoc eſt: Ferarum ſtatio.

Vide Brack. fo. 231. & 316. Britton fo. 34. Fleta lib. 2. cap. 34, 35.

Pudzeld or Woodgeld is to be free from payment of money for taking of Wood in any Forreſt. But let us now returne to our Littleton.

In this Section Littleton putteth an example of a condition in Law annexed to the office of the Keeper of a Park, but this example muſt be underſtood with a diſtinction, for if the Parker doth not attend on the Parke one or two ꝛc. dayes, this is no forfeiture of the office of Parkerſhip, but if in his default any Deere be killed, & ſo a damage to the Lord, that is a forfeiture: for (that it may be ſaid once for all) non-uſer of it ſelfe without ſome ſpeciall damage is no forfeiture of private offices, but non-uſer of publique offices which concern the adminiſtration of juſtice, or the common wealth, is of it ſelfe a cauſe of forfeiture.

5.E.4.15.b.L. 5.E.4. 20.Pl.Com.379.380. 2.H.7.11.30.H.6.32.&c.

¶ *Luy ouſter ſil voit, &c.* Littleton here ſpeaketh of an Ouſter by force of a Condition in Law, therefore it is to be ſeen in what other caſes the Grantor may lawfully ouſt his Officer.

There is a diverſity between officers that have no other profit, but a collaterall certaine fee, for there the Grantor may diſcharge him of his ſervice, as to be a Bayly, receiver, ſurbeyor,

18.E.4.8. 31.H.8.grants Br.134. 34.H.8.ibid.93. 11. Eliz.Dyer 285.

beyor, Auditor, or the like, the exercise whereof is but labour and charge to him, but he must have his fee: for the maine rule of Law is, that no man can frustrate or derogate from his owne grant to the prejudice of the Grantee And where albeit the grantee hath no other profit but his fee, yet that fee is to be perceived and taken out of the profits appertaining to the Lord within his office, for there the grantor cannot discharge him of his service or attendance, for that may turne to the prejudice of the Grantee, if the Grantor will not grant the Office at all. But in all cases where the Officer relinquisheth his office, and refuseth to attend, he loseth his Office, Fee, Profit and all.

There is another diversity where the Grantee, besides his certaine fee, hath profits and availes by reason of his office, there the grantor cannot discharge him of his service or attendance, for that should be to the prejudice of the grantee. As if a man doth grant to another the office of the Stewardship of his Courts of his Mannors with a certain fee, the Grantor cannot discharge him of his service and attendance, because he hath other profits and fees belonging to his office, which he should lose if he were discharged of his office. And as in the case which Littleton here putteth of the office of the Keeper of a Parke, for that he hath not only his fee certaine, but profits and availes also, in respect of his office, as Deere Skinnes, Shoulders, &c. But now let us proceed and see what other particular forfeitures in Law be of this office here spoken of by Littleton, and somewhat of Conditions in Law in generall.

22.H.6.10.3.6.E.6. Dier 71.

15.E.4.3 l. 5.E.4.26. 28.H.8.Bendloes inter Evelque de Londres & Hicron.lib.9.fo.50.95. 96.99.

And it is to be understood, that if any Keeper kill any Deere without warrant, or fell or cut any Trees, Woods, or Underwoods, and convert them to his owne use, it is a forfeiture of his office, for the destruction of vert is, by a mean, destruction of Venison. So it is if he pul down the lodge, or any house within the Park for putting of Hay into it for feeding of the Deer or such like, it is a forfeiture, and the reason wherefore the office in these and in like cases shall be forfeited, (f) is, quia in quo quis delinquit, in eo de jure est puniendus.

(f) Mich.33.E.1.coram Rege in Thesaur.Levesque de Durhams case.

As to Conditions in Law, you shall understand they be of two natures, that is to say, by the Common Law and by Statute. And those by the Common law are of two natures, that is to say, the one is founded upon Skill and Confidence, the other without Skill or Confidence: Upon skill & confidence, as here the office of Parkership, and other offices in the next Section mentioned, and the like.

Pl.com.373.a.Sir Henry Nevils case.21.E.4.20.93.

Touching Conditions in Law without skill, &c. some be by the common Law, and some by the statute. By the common law as to every estate of Tenant by the Courtesie, tenant in taple after possibility of issue extinct, tenant in dower, tenant for life, tenant for years, tenant by statute merchant or Staple, tenant by Elegit, Gardian, &c. there is a condition in law secretly annexed to their estates, that if they alien in fee, &c. that he in the reversion or remainder may enter, and sic de similibus, or if they claime a greater estate in Court of Record, and the like.

Lib.8.fo.44. Wittinghams case.

Concerning conditions in law founded upon statutes, for some of them an entry is given, and for some other a recovery by action: where an entry is given, as upon an alienation in Mortmaine &c. and the like. Where an action is given, as for Waste against tenant for life and years, and the like.

¶ *Et tiel Condition que est entendus per la ley estre annex a ascun chose est auxy fort, &c.* Here it is worthy the observation to take a view of the divisions aforesaid in some particular case. As for example. Admit that an Office of Parkership be granted or descend to an Infant or Feme Covert, if the conditions in Law annexed to this office which require skill and confidence be not observed and fulfilled, the office is lost for ever, because, as Littleton saith here, it is as strong as an expresse condition. But if a Lease for life be made to a Feme covert, or an Infant, and they by charter of feoffment alien in fee, the breach of this condition in law, that is without skill, &c. is no absolute forfeiture of their estate. So of a condition in law given by Statute, which giveth an Entry only. As if an Infant or Feme covert with her husband aliens by Charter of feoffment in Mortmaine, this is no barre to the Infant, or Feme Covert. But if a recovery be had against an Infant or Fem Covert in an action of waste, there they are bound and barred for ever.

Lib.8.fo.44. Wittinghams case.

And it is to be observed, that a condition in law by force of a statute which giveth a recovery is in some case more strong than a condition in law without a recovery. For if Lessee for life make a lease for yeares, and after enter into the land, and make waste, and the Lessor recover in an Action of waste he shall avoid the lease made before the waste done. But if the Lessee for life make a lease for years, and after enter upon him, and make a feoffment in fee, this forfeiture shall not avoyd the lease for yeares. Nor in any of the said cases a precedent Rent granted out of the land shall be avoyded. For if Lessee for life grant a rent charge, and after

after doth waste, and the Lessor recovereth in an action of wast, he shall hold the land charged during the life of the tenant for life, but if the rent were granted after the waste done, the Lessor shall avoyd it.

And the reason wherefore the lease for yeares in the case aforesaid shall be avoyded, is, because of necessity the Action of waste must be brought against the Lessee for life, which in that case must bind the Lessee for yeares, or else by the Act of the Lessee for life the Lessor should be barred to recover Locum vastatum, which the Statute giveth.

If a man hath an office for life which requireth skill and confidence, to which Office hee hath a house belonging, and chargeth the house with a rent during his life, and after commit a forfeiture of his Office, the rent charge shall not bee avoyded during his life, for regularly a man that taketh advantage of a condition in law, shall take the land with such charge as he finds it. And therefore Littleton is here to be understood, that a Condition in law is as strong as a condition in deed, as to avoid the estate or interest it selfe, but not to avoyd precedent charges, but in some particular cases, as by that which hath beene sayd appeareth.

There be at this day more conditions in law annexed to offices than were when Littleton wrote: for example, for offices in any wise touching the administration or execution of Justice, or Clerkship in any Court of Record, or concerning the Kings Treasure, Revenue, Account, Customes, Image, Auditorship, Kings Surveyor, or keeping of any of his Majesties Castles, Forts, &c. For if any of these officers bargaine or sell any of the sayd offices or any deputation of the same, or take any mony or profit, or any promise, covenant, bond or assurance, to have any mony or reward for the same, the person so bargaining or selling, or that shall take any such promise, covenant, bond or assurance, shall not onely forfeit his estate, but also every person so buying, giving or assuring be adjudged a disabled person to have or enjoy the same office or offices, deputation or deputations &c. And that all such bargains, sales, promises, covenants and assurances, as be before specified, shall be voyd, except as in the said Act is excepted. 3.H.7.ca.12. Auditor, Receiver, Bailif, Keeper of a Castle, Master of the game, Keeper or Parker of any Forrest, Parke, Chase, &c. 7.E.6.ca.1. Treasurer, Receiver, Collector, Bailife, &c. 5.E.6.ca.16.

Sir Robert Vernon Knight being Coferer of the Kings house of the Kings gift, and having the receit of a great summe of money yearely of the Kings Revenue, did for a certaine summe of mony bargain and sell the same to Sir A.I. and agreed to surrender the said office to the King, to the intent a grant might be made to Sir A. who surrendred it accordingly: thereupon Sir A. was by the Kings appointment admitted and sworn Coferer. And it was resolved by Sir Thomas Egerton Lord Chancellour, the chiefe Justice, and others to whom the King referred the same, that the said office was voyd by the said Statute, and that Sir A. was disabled to have or to take the said office, and that no non obstante could dispence with this act to enable the said Sir A. for the reason and cause before mentioned, Sect.180. And hereupon Sir A. was removed, and Sir Marmaduke Darrell sworne (by the Kings commandement) in his place. And note that all promises, bonds and assurances, aswell on the part of the bargainor, as of the bargainee, are voyd by the same Act. (*) Nulla alia re magis Romana respublica interiit, quam quod magistratus officia venalia erant. Mich.13.Jacobi Regis. Lib.3.fo.83.Colshils case. *Herod.fo.353.

(g) Jugurtha going from Rome, said to the City, Vade venalis civitas, mox peritura si emptorem invenias. (g) Salust.

Therefore by the Law of England it is further provided, that no Officer or minister of the King shall be ordained or made for any gift or brocage, favour or affection, nor that any which pursueth by him or any other, privily or openly to be in any maner of office, shall be put in the same office or in any other, but that all such officers shall be made of the best and most lawfull men and sufficient. A law worthy to be written in letters of Gold, but more worthy to be put in due execution. For certainly never shall Justice be duely administred, but when the officers and ministers of Justice be of such quality, and come to their places in such maner as by this law is required. 12.R.2.ca.2.

¶ *Tiel condition que est entendus per la ley estre annex a ascun chose, est auxi fort sicome la condition fuit mise en escript.* And this accords with that ancient rule: Utique fortior & potentior est dispositio legis quam hominis. Vid.Sect.419.429.430.

Sect.

Sect. 379.

21.E.4.20. Pl.Com.379.

¶ *Seneschall.* Of this I have spoken before.

8.E 4.6.

¶ *Constabularie.* Of this likewise something hath beene spoken before. But a Constable is often taken in the law for a warden or keeper, as Constabularius castri de Dover & 5. portuum; for the Warden of the Castle of Dover, and the Cinqueports, &c. So as in this sense Constabularius is taken for Castellanus, and this is proved by the Statute (*) of W.1. ca. 7. Des prises des Constables ou Castellains faitz des auters, &c. And Magna Carta, c.19. Nullus constabularius vel ejus ballivus capiat blada vel alia catalla alicujus qui non sit de villa, ubi castrum suum situm est, &c. Stanford fo. 152. Constabularius Turris London, for Custos Turris, 32.H.8.cap.28. Constable of the Forrest, for the Keeper of the Forrest.

(*) W.1.ca.7.

(b) Magna carta ca.19.

Stanf.fo.152. 32.H.8.ca.28.

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¶ *Bedelarie.* Bedell is derived of the French word Beadeau, which signifieth a messenger of the Court, or under Baylife, in Latine Bedellus.

And the oath of a Bedell of a Mannor is, that hee shall duely and truly execute all such Attachments and other Proces as shall bee directed to him from the Lord or Steward of his Court, and that hee shall present all pound Breaches which shall happen within his office, and all chattels wayved, and estrayes.

¶ *Bayliwicke.* Of this sufficient hath beene said before. 168.b.

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¶ *Bayliwicke.* Of this sufficient hath beene said before. 168.b.

Sect. 379.

¶ En mañ le maner est de graunts doffices de seneschal, Constabulak, Bedelary, bailiwick, ou autes offices, &c. Mes si tiel office soit grant a un hom, a aver & ocupier per luy ou son deputy, donqs si loffice soit occupy p luy, ou per son deputy, sicom il devoit per le ley estre occupy, ceo suffist pur luy, ou auterment le grantor & ses heirs poient ouste le grantee come est avantdit.

IN this manner it is of grants of the Offices of Steward, Constable, Bedelarie, Bayliwick, or other Offices, &c. But if such Office bee granted to a man To have and to occupie by himselfe or his deputy, then if the Office bee occupied by him or his deputy, as it ought by the Law to bee occupyed, this sufficeth for him, or otherwise the grantor and his heires may ouste the Grantee as is aforesayd.

Sect. 380.

¶ Here Littleton termeth words of limitation to be Conditions in Law: for, his first example is.

¶ *Durant le coverture enter eux.* Durante coopertura inter eos. This word (Durante) is properly a word of limitation, as Durante viduitate, or Durante virginitate, or Durante vita, &c. And properly a Condition in law is, as hath beene said, where the

¶ Item estates de tres ou tenemēts purront estre sur condition en ley, coment que sur lestate fait ne fuit ascun mention ou reherſal fait de le cōdition. Sicome mittomus q̄ un leas soit fait a le baron, & a sa feme, a aver & tener a eux durāt l' coverture

ALso estates of lands or tenements may bee made upon condition in law, albeit upon the estate made there was not any mention or rehearsall made of this condition. As put the case that a lease be made to the husband and wife, to have and to hold to them during

enter

enter eux, en ceſt cas ils ont eſtate pur terñ de lour deux dies ſur condition en ley, ſ. ſi un de eux devie, ou que divorce ſoit fait enter eux, donq̃ bien lirroit a le Leſſor & a ſes heires dentrer, &c.

the coverture betweene them, In this caſe they have an eſtate for terme of their two lives upon condition in law, s. if one of them die, or that there bee a divorce betweene them, then it ſhal be lawfull for the leſſor and his heires to enter, &c.

Law createth the ſame without any expreſſe words.

Dum alſo maketh a limitation, as if a leaſe be made, Dum ſola fuerit, or Dum ſola & caſta vixerit. Dummodo is alſo a word of limitation, as Dummodo ſolveret talem reditum. Quamdiu alſo is a word of limitation, for if a man grant a rent out of the Manor of D. 37.H.6.27. 3.E.3.15. 3.Aſſ.Pl. 14.E.2.Grant.92.

Quamdiu the Grantor ſhall bee dwelling upon the Mannor, this is good, or Quamdiu ſe bene geſſerit. 37.H.6.27.

And ſo be theſe words. Donec, Quouſque, Uſque ad, Tam diu, Ubicunque. 10.Aſſ.4. 6.E 3.8.9.31. 3.E.3.18.Annuity 40. 19.H.6.54.Temps E.1. Annuity 150. 11.Aſſ p.8. 21.Aſſ.p.18.26 E.3.69. 7.H.4.16. 9.E.4.25.26. 9.H.6.39. 14.H.8.13.

¶ *Si lun de eux devie &c.* For if one of them die, the coverture is diſſolved, and conſequently the ſtate determined by the limitation.

¶ *Ou que divorce ſoit fait enter eux, &c.* Here is a diſtinction to be underſtood: for there be two kind of divorces, viz. one a Vinculo matrimonii, * and the other, A menſa & thoro. Divortium dicitur a divertendo, or divortendo, quia vir divertitur ab uxore. Divorces A vinculo matrimonii are theſe: Cauſa Præcontractus, Cauſa Metus, Cauſa Impotentiæ ſeu Frigiditatis, Cauſa Affinitatis, Cauſa Conſanguinitatis, &c. And I reade in an ancient Record, Coram Rege Termino Paſch 30.E.1. William de Chadworthes caſe, that hee was divorced from his wife for that he did carnally know her Daughter before he married the mother; all which are cauſes of divorce preceding the marriage. * 47.E.3.27. 39.E.3.32.33. 11.H.4.14.76. Bracton fo.198. 18.E.4.28.24.H.8. baſtards. Br.44.39.E.1. baſtard. 21. 22.b.4 tit. Conſultat.5. 6.E.3.249.25.E.3.39.

A Menſa & Thoro, as Cauſa Adulterii, which diſſolveth not the marriage A vinculo Matrimonii, for it is ſubſequent to the marriage. And the Divorce that Littleton here ſpeaketh of is intended of ſuch divorces, as diſſolve the marriage A vinculo matrimonii, and maketh the iſſue baſtard, becauſe they were not Juſtæ nuptiæ. And therefore in Littletons caſe though the husband and wife be divorced Cauſa Adulterii, yet the freehold continueth, becauſe the Coverture continueth. (*) Vid. Sect. 399.

Sect. 381.

CEt que ils ont eſtate pur terme de lour deux vies, Probatur ſic, cheſcun home que ad eſtate de franktenement en aſcun terres ou tenements, ou il ad eſtate en fee, ou en fee taile, ou pur terme de ſa vie demeine, ou pur terme dauter vie, & per tiel leaſe ils ont franktenement, mes ils nont per ceſt grãt fee, ne fee taile, ne pur terme dauter vie, Ergo, ils ont eſtate pur terme de lour vies, mes ceo eſt ſur condition en ley, en le forme avantdit, & en ceſt cas ſils ſieront waſt, le feoffor avera envers eux briefe de waſt

AND that they have an eſtate for term of their two lives, is proved thus, every man that hath an eſtate of free hold in any lands or tenements, either he hath an eſtate in fee, or in fee taile, or for terme of his own life, or for terme of another mans life, & by ſuch a leaſe they have a free hold: but they have not by this grant fee, nor fee taile, nor for terme of anothers life, *Ergo*, they have an eſtate for terme of their owne lives, but this is upon condition in Law in forme aforeſaid, and in this caſe if they ſhall do waſt, the feoffor ſhal

suppoſant per ſon briefe, Quod tenet ad terminum vitæ,&c. mes en ſon count il declare coment & en quel maner le leas fuit fait.

have a writ of waſte againſt them ſuppoſing by his writ, *Quod tenet ad terminum vitæ,&c.* but in this count he ſhall declare how, and in what maner the leaſe was made.

Pl.Com.561.b. Vid.Sect.345.ſimile.

¶ *Probatur ſic.* By this argument logically drawne a diviſione, it appeareth, how neceſſary it is that our Student ſhould (as Littleton did) come from one of the Vniverſities to the ſtudy of the Common law, where hee may learne the liberall Arts, and eſpecially Logick, for that teacheth a man not onely by juſt argument to conclude the matter in queſtion, but to diſcerne betweene truth and falſhood, and to uſe a good method in his ſtudy, and probably to ſpeake to any legall queſtion, and is defined thus, Dialectica eſt ſcientia probabiliter de quovis themate diſſerendi, whereby it appeareth how neceſſary it is for our Student.

37.H.6.27. ¶ *Suppoſant per ſon briefe*, Quod tenet ad terminum vitæ, *&c.* This and the reſt of this Section is evident and plaine.

Sect. 382.

¶ *Si un Abbe.* So it is of a Biſhop, arch-Deacon, and other Eccleſiaſticall or temporall Body Politique or Corporate, or of any Officer or Graduate, or the like.

Vid.Brac.lib.5.414.

¶ *Reſigne ou ſoit depoſe.* And ſo it is of a Tranſlation and Ceſſion.

CEN meſme le maner eſt, ſi un Abbe fait un Leaſe a un hõe, a aver & tener a luy durant le temps que le leſſor eſt Abbe, en ceſt caſe le Leſſee ad eſtate pur terme de ſa vie demeſn, mes ceo eſt ſur condition en ley, ſ. que ſi labbe reſigna, ou ſoit depoſe, que bien lirroit a ſ ſucceſſor dentrer, &c.

IN the ſame manner it is if an Abbot make a leaſe to a man for yeares, to have & to hold to him during the time that the Leſſor is Abbot; in this caſe the leſſee hath an Eſtate for terme of his own life: but this is upon condition in Law, s. That if the Abbot reſigne or bee depoſed, that then it ſhall bee lawfull for his ſucceſſor to enter,&c.

Section 383.

¶ *LIure Daſſiſes* is a booke of the Reports of Caſes in the reigne of King Edward the third, and it is called the booke of Aſſiſes, becauſe the greateſt part of the caſes therein are upon writs of Aſſiſes brought as hath beene ſaid, and which hath beene cited before.

¶ *Deviſa les Tenements a vendre per ſon Executor.* This muſt

ITem hõe poit veier en le Liure Daſſiſe, viz. anno 38.E.3.p.3. un pl Daſſ. en ceſt forme que enſuiſt: ſ, Un Aſſiſe de Novel Diſſeiſin auterfoits fuit port vers A. que pleda al Aſſiſe, & trove fuit per verdict, Que

ALſo a man may ſee in the Booke of Aſſiſes, *An.* 38.*E.*3.*p.* 3. a plea of Aſſiſe in this form following, s. An Aſſiſe of *Novel Diſſeiſin* was ſometime brought againſt A. who pleaded to the Aſſiſe, & it was found by verdict, that

lour

launceſtor le plaintif deviſa ſes tenements a vendre per le Defendant, que fuit ſon Executor, & de faire diſtribution des deniers pur ſon alm: Et fuit trove que maintenant apres la mort le Teſtator, un home luy tendiſt certaine ſumme de deniers pur les Tenements, mes non pas al value, & que le Executor puis avoit tenus les Tenements en ſa main demeſne per deux ans, al entent de les vender pluis chier a aſcun auter, & trove fuit q̃ il avoit tout temps priſt les profits de les Tenements a ſ̃ uſe demeſne ſans r̃e faire pur lalme le mort, &c. Moubray Juſtice diſoit, Lexecutor en tiel caſe eſt tenus p la ley a faire le vender a pluis toſt que il purroit apres la mort ſon Teſtator, & trove eſt que il refuſe de faire vendr̃, & iſſint ỹ avoit un default en luy, & iſſint per force del deviſe il fuiſt tenus dañ mis touts le profits avenants de les Tenements al uſe l' mort, & trove eſt que il ad

the Anceſtour of the Plaintife deviſed his Lands to bee ſold by the Defendant who was his Executor, and to make diſtributiõ of the money for his Soule. And it was found That preſently after the death of the Teſtator, one tendred to him a certaine ſum of mony for the lands, but not to the value, and that the Executor afterwards held the lands in his own hands two yeares, to the entent to ſell the ſame dearer to ſome other, and it was found that he had all the time taken the profits of the lands to his owne uſe, without doing any thing for the Soule of the deceaſed, &c. *Moubray* Juſtice ſayd, The Executor in this caſe is bound by the Law to make the ſale as ſoone as he may after the death of his Teſtator, and it is found that hee refuſed to make ſale, and ſo there was a default in him, and ſo by force of the Deviſe hee was bound to put all the profits comming of the lands to the uſe of the dead, and it is found that he tooke them to his

bee intended to bee of Lands deviſable by Cuſtome, for Lands by the Common law were not deviſable, (as hath been ſaid:) for in this Section is implyed a diverſity, viz. when a man deviſeth that his Executor ſhall ſell the Land, there the lands deſcend in the meane time to the heire, and untill the ſale bee made, the heire may enter and take the profits. But when the Land is deviſed to his Executor to bee ſold, there the deviſe taketh away the diſcent, & veſteth the ſtate of the land in the Executor, and he may enter and take the profits, and make ſale according to the deviſe. And here it appeareth by our Author, That when a man deviſeth his tenements to be ſold by his Executors, it is all one as if he had deviſed his tenements to his Executors to bee ſold: and the reaſon is, becauſe he deviſeth the tenements, whereby hee breakes the Diſcent. III. b

¶ Mowbray. John Mowbray, was a reverend Judge of the Court of Common pleas, and deſcended of a noble Family.

¶ *Lexecutor en tiel caſe eſt tenus per la ley a faire le vender a pluis toſt que il purroit apres la mort ſon teſtator &c.* And the reaſon hereof is, for that the meane profits taken before the ſale, ſhall not bee Aſſets, ſo as he may be compellable to pay debts with the ſame, & therefore the law will enforce him to ſell the lands as ſoone as he can, for otherwiſe hee ſhall take advantage of his owne laches: But if a man deviſe that his Executor ſhall ſell his land, there hee may ſell it at any time, for that hee hath but a bare power, and no profit. And by this caſe it appeareth what conſtruction the Law maketh for the ſpeedy payment of debts. And here is to bee obſerved, That many words

words in a will doe make a Condition in Law, that make no condition in a deed: as here to devise Lands to an Executor ad vendendum, so if lands be devised to one ad solvendum 20. l. to I. S. or paying twenty pounds to I. N. this amounts to a Condition. And Crickmors case was this, A man seised of certaine lands holden in Socage had issue two daughters, A. and B. and devised all his lands to A. and her heires, to pay unto B. a certain summe of money at a certain day and place, the money was not payd, and it was adjudged, That these words, To pay, &c. did amount in a will to a Condition, and the reason was, for that the land was devised to A. for that purpose, otherwise B. to whom the money was appointed to be payd, should be remediesse, Et interest reipublicæ suprema hominum testamenta rata haberi: and the Lessee of B. upon an actuall Ejectment recovered the moity of the land against A.

Mich.31. & 32.El. in the Kings Bench. Crickmers case adjudge. Dy.6.E.6. fo.74. 7.L.6.70.

pryse a luy & ses issint auter default en luy: Per que fuit adjudge que le plaintife recovera. Et issint appiert per le dit judgement, que per force del dit devise, lexecutor navoit Estate ne poyer en les Tenements, forsque sur condition en ley.

owne use, and so another default in him. Wherefore it was adjudged, That the Pl. should recover. And so it appeareth by the said Judgement, That by force of the said Devise the Executor had no estate nor power in the lands, but upon cõdition in law.

¶ *Et issint appiert per le judgement, &c.* This conclusion upon a Judgement is of great authority in law, Quia judicium pro veritate accipitur, and, as it hath been said, Judicium est quasi juris dictum.

Sect. 384.

2.E.4.36.

334 b.

THereby it appeareth That Limitations which (as hath beene said, Littleton termeth Conditions in law) may be pleaded without Deed, and the reason of our Author is observable, because the law in it selfe purporteth the Condition, whereof somewhat hath bin said before, and therefore look backe to the Conditions in law, or words of limitation, and withall that a stranger may take advantage of a limitation, as hath beene said.

335. a

Vid.Sect.220.

Littleton having spoken at large of conditions in Deed and in Law, somewhat seemeth necessary to bee said of defeasances whereby the state or right of Freehold or inheritance may bee defeated and avoyded

Bract.lib.2.fo.16,17. Ass. p.2. 5.E.3.42.E.2.1. 43.E.3.17.43.Ass 12. 7.H.6.43.8.H.6.23. 32.E.3.Annu.30. 5.E.3. Annuity 44. 30.Ass.p.1. 30.Ass.p.11. 31.Ass.32.

¶ *Defeasance*, Defeisantia is fetched from the French word Defaire, i. to defeat or undoe, infectum reddere quod factum est. There is adversity betweene Inheritances executed, and Inheritances executory as lands executed by Livery, &c. cannot by Indenture of Defeasance be defeated afterwards And so if a Disseisee release a Disseisor, it cannot be defeated by Indentures of Defeasance made afterwards, but at the time of the release or feoffment, &c. the same may bee defeated by Indentures of Defeasance, for it is a Maxime in Law, Quæ incontinenti fiunt in esse videntur.

Max.

CEt mults autres choses & cases y sont destates sur condition & la ley, et en tiels cases il ne besoigne daver monstre aucun fait rehearsant la condition pur ceo que la ley en luy mesm purport le condition, &c.

AND many other things there are of Estates upon Condition in Law, and in such cases hee needed not to have shewed any Deed, rehearsing the condition, for that the Law it selfe purporteth the Condition, &c.

Ex paucis dictis intendere plurima possis.

Ex paucis dictis intendere plurima possis.

CPlus serra dit de Conditions en le prochein Chapter, en le Chapter de Releases, & en le Chapter de Discontinuance.

More shall bee said of Conditions in the next Chapter, in the Chapter of Releases, and in the Chapter of Discontinuance.

But

But Rents, Annuities, Conditions, warranties, and such like, that be Inheritances Executory may be defeated by Defeasances made, either at that time, or at any time after: And so the Law is of Statutes, Recognizances, Obligations, and other things Executory. 20.Ass.pl.7.7.E.4.29. Browning and Beston's case. Pl.Com.131.28.H. 8.Dyer 6.27.H.8.15. 19.R.2.cone 10. Albanies case.lib.1.107.

¶ *Ex paucis dictis intendere plurima possis.*

Verses at the first were invented for the helpe of memory, and it standeth well with the gravity of our Lawyer to cite them. By this Verse of our Author, Inferences and Conclusions in like cases are warrantable.

Lastly, somewhat were necessary to be spoken concerning clauses of provisoes, containing Power of Revocation, which since Littleton wrote, are crept into voluntary Conveyances, which passe by raising of uses, being executed by the (*) Statute of 27.H.8. and are become very frequent, and the Inheritance of many depend thereupon. As if a man seised of Lands in Fee, and having issue divers Sonnes by Deed indented, covenanteth in consideration of Fatherly love, & for the advancement of his Blood, or upon any other good consideration, to stand seised of three Acres of Land to the use of himselfe for life, and after to the use of Thomas his eldest Son in taile; and for default of such issue, to the use of his second Son in taile, with divers like remainders over. With a Proviso, that it shall be lawfull for the Covenantor at any time during his life to revoke any of the said uses, &c. This Proviso being coupled with an use, is allowed to be good, and not repugnant to the former States. But in case of a Feoffment, or other Conveyance, whereby the Feoffee or Grantee, &c. is in by the common Law, such a Proviso were meerly repugnant and voyd. (*)27.H.8.cap.10.

And first in the case aforesaid, if the Covenantor, who had an estate for life, doe revoke the uses according to his power, he is seised againe in fee simple without entry or claime.

Secondly, he may revoke part at one time, and part at another.

Thirdly, if he make a feoffement in fee, or levie a fine, &c. of any part, this doth extinguish his power but for that part, whereas in that case the whole Condition is extinct. But if it be made of the whole, all the power is extinguished. So as to some purposes, it is of the nature of a Condition, and to other purposes in nature of a Limitation. Eib.1.fol.173,174. Digges case. Lib.1.fol. 107. Albanies case. Lib. 10.fol.143. Scropes case. Lib.7.fol.12,13. Sir Francis Englefields case.

Fourthly, if hee that hath such power of revocation hath no present interest in the Land, nor by the Ceasor of the state shall have nothing, then his feoffment or fine, &c. of the Land is no extinguishment of his power, because it is meere collaterall to the Land.

Fiftly, by the same Conveyance that the old uses be revoked, may new bee created or limited, where the former cease ipso facto by the revocation, without either entry or claime.

Sixtly, that these revocations are favourably interpreted, because many mens Inheritances depend on the same. And here I may apply the aboveseid verse:

Ex paucis dictis intendere plurima possis.

Chap.6. Discents que tollent Entries. *Sect.*385.

Discẽts q̃ tollẽt entries sont ẽ deux mañs, cestascavoir, ou discẽt est en fee, ou ẽ fee taile: Discẽts ẽ fee q̃ tollẽt entries sont, sicõe home seisie de certaine terres ou tenements est

Discents which toll Entries are in two maners, to wit, where the Discent is in fee, or in fee taile. Discents in fee which toll entries are as if a man seised of certain lands or tenements is by another disseised, and the disseisor hath issue, and

Discents. This word commeth of the Latine word discendere, id est, ex loco superiore in inferiorem movere; and in legall understanding it is taken when Land, &c. after the death of the Ancestor is cast by Course of Law upon the heire, which the law calleth a Discent. And this is the noblest and worthiest meanes whereby Lands are derived from one to another, because it is wrought and bested by the Act of Law, and Right of Bloud, unto the worthiest Mirror, cap.2.Sect.5. Bract.lib.5.to.370.& 434. Britton, fol.115.215. Vide Sect.5.

thiest and next of the Blood and Kindred of the Ancestor, and therefore it hath not in the Common Law altogether the same signification that it hath in the Civil Law, for the Civilians call him, Hæredem, qui ex testamento succedit in universum jus testatoris. But by the Common Law he is onely Heire which succeedeth by right of Blood. And this agreeth well with the Etymologie of the word (Heire) to whom the Lands discend, for Hæres dicitur ab hærendo, quia qui hæres est hæret, hoc est, proximus est sanguine illi cujus est Hæres. So as hee that is Hæres, sanguinis est Hæres, & herus hæreditatis.

¶ *Discents que tollent entries sont en deux Manners.* Here is an exact and perfect division made by our Author, and yet withall plaine and perspicuous.

Now as a Discent is the worthiest meanes to come to Lands, &c. so hath the heire more privileges than any that by other order or meanes come to the Lands, &c. as shall appeare hereafter. *f. 390 & 413.*

p un auter disseisie, & le disseisor ad issue & morust de tiel estate seisie, ore les tenements discendont al issue del disseisor per course de la ley come heire a luy: Et pur ceo que la ley mitte les terres ou tenements sur lissue per force del discent, issint que lissue vient a les tenements per course de ley, & nemy per son fait demesne, lentrie le disseisee est tolle, & il est mis de suer un briefe Dentre sur disseisin envers le heire le Disseisor, de recoverer la terre.

dieth of such estate seised, now the Lands discend to the issue of the disseisor by course of Law, as heire unto him. And because the law cast the lands or tenements upon the issue by force of the Discent, so as the issue commeth to the Lands by course of Law, and not by his owne Act, the entry of the Disseisee is taken away, and hee is put to sue a Writ of *Entrie sur disseisin* against the heire of the Disseisor, to recover the Land.

(*) Bract. lib.4.fol.162. & 269. Britton.fol.115. Fleta lib.4.cap.2. (a) 50.E.3.21.1.Ass.13. 20.H.3.Ass.432. 9.Ass.15. 29.Ass.5.54. 26.Ass.12. 21.Ass.28. 43.Ass.17. (b) Lamb.explicat.fol. 129.70.

Nota, In ancient time (*) if the Disseisor had beene in long possession, the Disseisee could not have entred upon him. (a) Likewise the Disseisee could not have entred upon the Feoffee of the Disseisor, if hee had continued a yeare and a day in quiet possession. But the Law is changed in both these Cases, only the dying seised being an Act in Law, doth hold at this day, and this seemeth to be very ancient, for this was the Law before the Conquest. (b) Porro autem quam maritus sine lite & controversia sedem incoluerit, eam conjux & proles sine controversia possidento, siqua in illum lis fuerit illata viventem, eam hæredes ad se (perinde atque is vivus) accipiunto.

And one of the reasons of this ancient Law may be, that the heire cannot suddenly by entendment of Law, know the true state of his Title. And for that many advantages follow the possession and Tenant, the Law taketh away the entry of him that would not enter upon the Ancestor, who is presumed to know his Title, and driveth him to his Action against the Heire that may be ignorant thereof.

11.H.7.12. 40.E.3.24.

¶ *Et morust de tiel estate seisie.* To a Discent that taketh away an entry, a dying seised is necessary, as here it appeareth, but a man to other purposes may have Lands by discent, though his Ancestor dyed not seised, as hath been said before.

33.E.3.gard.162. 6.H.4.4.39.E.3.36. 15.E.4.14. F.N.B.143.q. 7.H.4.12.5.2.Ass.p.9. 21.E.3.2.

¶ *Des terres ou tenements.* That is, of such tenements as be corporeall, and do lie in livery, and not of Inheritances, which lye in grant, as Advowsons, Rents, Commons in grosse, and such like, which be Inheritances incorporeall, and yet are included within this word (tenements.) For Discents of them doe not put him that right hath to an Action, and the reason of this diversity is, for that houses serve for the habitation of men, and Lands to be manured for their sustenance, and therefore the Heire after a Discent shall not be molested or disturbed in them by entry.

¶ *Est per un auter disseisie.* The like Law is of an abatement or intrusion, and of their Feoffees or Donees, &c.

Upon the words of Littleton a diversity may be collected, that if a recovery bee had by A. against

gainst B. and before execution B. die seised, this Discent shall not take away the entry of the Recoveror. But if after execution B. had disseised the Recoveror, and died seised, this Discent shall take away the entry of the Recoveror within the expresse words of Littleton: and so it is in case of a Fine. 33.E.3.tit.3. Entrie con. gc.51.45.E.3.quare Imp.139. 27.E.3.48.9.H.6.49. 21.H.6.17.3.E.4.6. 12.E.4.19. 3.H.7.3. 6.E.4.11. 7.H.7.15. 5.H.7.31. 10.H.7.5.b

(n) A recovery is had against Tenant for life, where the remainder is over in Fee, Tenant for life dieth, he in remainder entreth before execution, and dyeth seised, the entry of the Recoveror is lawfull, because he is privie in estate, otherwise it is if the Discent had beene after execution. (n)5.H.7.2.

A. recovereth an advowson against B. in a writ of Right, and hath judgement finall, the Incumbent dyeth, B. by usurpation presents to the Church, and his Clarke is admitted and instituted, B. dieth, A. is put out of possession, and the heire of B. is not so bound by the judgement either in bloud or estate, but that he shall present; (o) B. leyde a fine to A. of an advowson to him and his heires, after the Church becomes void. B. presents by usurpation, and his Clarke is admitted and instituted, this shall put A. the Conusee out of possession. And the reason of these two cases is, for that at the Common Law every presentation to a Church did put the rightfull Patron out of possession, and did put him to his writ of Right, whether the presentation were by Title or without, and therefore albeit the usurpation were in both the said cases before execution, yet it put the rightfull Patron out of possession. So note a diversity betweene a recovery of Land, and of an Advowson. 45.E.3.quare imp.139. (o)8.E.2. quare imp.166.

¶ *Lentrie le disseisee est tolle.* Here is one of the privileges which the Law giveth to the heire by discent of Houses and Lands.

(p) At the Common Law if the Disseisor, Abator, or Intruder had dyed seised soone after the wrong done, the Disseisee and his heires had been barred of his and their entry without any time limited by Law, but now by the Statute (q) made since Littleton wrote, it is enacted, that except such Disseisor hath been in the peaceable possession of such Mannors, Lands, &c. whereof he shall die seised by the space of five yeares next after such disseisin, &c. without entry or continuall claime, &c. that there such dying seised, &c. shall not take away the entry of such person or persons, &c. But after the five yeares the Disseisee must take such continuall claime as our Author hath taught us, the learning whereof is necessary to be knowne. And it is said that Abators and Intruders are out of this Statute, because the Statute is penall, and extends only to a Disseisor, and that was the most common mischiefe: Et ad ea quæ frequentius accidunt jura adaptantur. (p) Lestat. de 32. H.8. cap.33. Vid. Sect. 422. 426. (q)37.H.6.1. Pl.Com.47.in Wimbe. shes case.

The Feoffee of a Disseisor is out of the said Statute, and remaines as at the Common Law. But to a Disseisor the Statute is taken favourably for advancement of the ancient right: for whether the disseisin be without force, or with force, it is within the Statute. And albeit the Statute speake of him that at the time of such Discent had title of entry, &c. or his heires, yet the successors of bodies Politique or Corporate, so you hold your seise to a disseisin, are within the remedy of this Statute, for the Statute extendeth cleerely to the Predecessor being disseised; and consequently without naming of his Successor extendeth to him, for he is the person that at the time of such Discent had title of entry. Mich.4.& 5.Eliz. Dier 219.acc.

But if a man make a Lease for life, and the Lessee for life is disseised, and the Disseisor dye seised within five yeares, the Lessee for life may enter; but if he die before hee doth enter, it is said that the entry of him in the Reversion is not lawfull, because his entry was not lawfull upon the Disseisor at the time of the Discent, as the Statute speaketh. But if Lessee for life had dyed first, and then the Disseisor had died seised, he in the Reversion had been within the remedy of the Statute, because he had title of entry at the time of the Discent, as the Statute speaketh, and so within the expresse letter of the Statute, albeit the disseisin was not immediate to him, and the like is to be said of a remainder, &c. Vid.Pl.Com.47.ubi supra.

¶ *Briefe de entrie sur disseisin.* Breve de ingressu super disseisinam. F.N.B.191.

Of this writ somewhat shall be said in the next Section.

Sect.386.

¶ Discēts ē tail q̄ tollent entries sont, sicome home est disseisie, & Discents in Taile which take away entries are, as if a man bee disseised, and the

¶ *Moruſt de tiel estate seisie.*

If a Disseisor make a gift in taile, and the Donee discontinueth in fee, and disseiseth the

the Diſcontinuee, and dyeth ſeiſed, this diſcent ſhall not take away the entry of the Diſſeiſee, for the diſcent of the Fee ſimple is baniſhed and gone, by the Remitter, and albeit the iſſue bee in by force of the eſtate taile, yet the Donee died not ſeiſed of that eſtate, and of neceſſity there muſt be a dying ſeiſed, as hath beene ſaid, which is a point worthy of obſervation, and implyeth many things.

¶ *En ceſt caſe lentrie le diſſeiſee eſt tolle.*

le diſſeiſor dona, m̃ la terre a un auter en t taile, & t tenant en le taile ad iſſue & morust de tiel eſtate ſeiſie, & iſſue enter, en ceſt caſe lentre t diſſeiſee eſt tolle, & il eſt mis de ſuer envers iſſue de t tenant ẽ taile un briefe Dentre ſur diſſeiſin.

diſſeiſor giveth the ſame land to another in taile, and the tenant in taile hath iſſue and dieth of ſuch eſtate ſeiſed, and the iſſue enter, in this caſe the entrie of the diſſeiſee is taken away & he is put to ſue againſt the iſſue of the tenant in taile a writ of *Entrie ſur diſſeiſin.*

9.H.7.24. If a Diſſeiſor make a gift in taile, and the Donee hath iſſue and dyeth ſeiſed, now is the entry of the Diſſeiſee taken away, but if the iſſue die without iſſue, ſo as the eſtate taile which diſcended is ſpent, the entry of the Diſſeiſee is revived, and he may enter upon him in the reverſion or remainder.

13.H.4.8,9. 33.H.6.5.b. per Moyle. 34.H.6.11.a.per Curiam, Vid.Sect.395. So if there be Grandfather, Father, and Son, and the Son diſſeiſeth one, & infeoffeth the Grandfather who dieth ſeiſed, and the land diſcendeth to the Father, now is the entry of the Diſſeiſee taken away; but if the Father dyeth ſeiſed, and the land diſcendeth to the Sonne, now is the entry of the Diſſeiſee revived, and he may enter upon the Son, who ſhall take no advantage of the diſcent, becauſe he did the wrong unto the Diſſeiſee. But in the caſe aboveſaid ſome have ſaid, that where after ſuch diſcent to the Father, he made a Leaſe to the Son, for terms of another mans life upon whom the Diſſeiſee entred, that the Sonne brought an Aſſiſe and recovered, and the reaſon that hath beene yeelded is, for that the Son had not the Fee Simple which he gained by diſſeiſin, but is a purchaſer of the Freehold onely from the Father, and the diſcent remaine not purged. Contrary it were, as it is there ſaid, if the Son were heire to the Diſcent. But the booke cited there in Fitzherb.tit. Title Placit.6.doth not warrant that caſe, and I hold the Law to be contrary, viz. that the Diſſeiſee in that caſe ſhall enter upon the Diſſeiſor, aſwell as if the Father had conveyed the whole Fee Simple to the Son, for in that caſe alſo the diſcent to the Father is not purged. If a Diſſeiſor make a leaſe to an Infant for life, and he is diſſeiſed, and a diſcent caſt, the Infant enters, the entry of the Diſſeiſee is lawfull upon him. More ſhall be ſaid of the like matter in this Chapter hereafter in his proper place, Sect.393,395.

13.E.3.Br.tit.Entrie Cong.127.

¶ *Briefe dentrie ſur diſſeiſin.* Breve de ingreſſu ſuper diſſeiſinam. This writ lieth onely upon a diſſeiſin made to the Demandant or to ſome of his Anceſtors, & of this writ there be foure kindes: The firſt is a writ that lyeth for the Diſſeiſee againſt the Diſſeiſor upon a Diſſeiſin done by himſelfe, & this is called a writ of entry in the nature of an Aſſiſe. The ſecond is a writ of Entrie ſur diſſeiſin en le Per, whereof Littleton here ſpeaketh, for the heire by diſcent is in the Per by his Anceſtor: ſo it is if the Diſſeiſor make a feoffment in fee, a gift in taile, or a Leaſe for life, for they are in the Per by the Diſſeiſor. (*) The third is a writ of Entry Sur diſſeiſin en le Per & Cui, as where A. being the Feoffee of D. the Diſſeiſor maketh a feoffment over to B. there the Diſſeiſee ſhall have a writ of Entry Sur diſſeiſin of Lands &c. in which B. had no entry but by A. to whom D. demiſed the ſame, who unjuſtly and without judgement diſſeiſed the Demandant. Theſe are called Gradus, Degrees, which are to be obſerved, or elſe the writ is abateable, for Sicut natura non facit ſaltum, ita nec lex.

19.H.6.56.9.H.5.9. Bracton lib.5. fo.219.b. & 318.Britt.fol.264,265. Fleta lib.5.cap.35. 5.E.3.216. (*)22.E.3.1.b.7.E.3.25. F.N.B.198.

The fourth is a writ of Entrie ſur diſſeiſin in le poſt, which lieth when after a diſſeiſin, the land is removed from hand to hand beyond the degrees, and it is called in le poſt, becauſe the words of the writ bee Poſt diſſeiſinam, quam D. injuſte, &c. fecit, &c. the formes of theſe writs you ſhall read in the Regiſter and F.N.B. and therefore it were needleſſe to recite them here. So then a degree is of two ſorts, either by Act in law, whereof Littleton here putteth an example of a Diſcent, or by an act of the party, by lawfull conveyance as is aforeſaid. But it is to bee underſtood, that at the Common Law, if the lands were conveyed out of the degrees, the Demandant was driven to his writ of right, in reſpect of ſuch long poſſeſſion in ſo many mens hands, which the Law doth ever reſpect and favour. And therefore by the Statute (a) of Marlebridge, the writ of Entrie in le poſt is given, Proviſum eſt etiam quod ſi alienationes illæ de quibus breve de ingreſſu dari conſuevit, per tot gradus fiant, per quot breve illud in forma prius uſitata fieri non poſsit, habeant conquerentes breve ad recuperandam ſeiſinam ſuam ſine mentione graduum,

14.H.4.40.

(a)Marlebr.cap.29. 24.E.3.70.

graduum, ad cujuscunque manus per hujusmodi alienationes res illa devenerit, per breve originale, & per commune consilium domini regis inde providendum, &c.

Now it is necessary to bee knowne, what doth make a degree. First, no estate gained by wrong doth make a degree, and therefore neither Abatement, Intrusion, or Disseisin upon Disseisin, doth make a degree. Neither doth every change by lawfull title worke a degree, as if a Bishop or an Abbot, or the like, disseise one and die where his successor is in by lawfull title, for though the person be altered, yet the right remaineth where it was, viz. in the Church, and both of them seised in the same right, viz. in the right of the Church, and therefore in that very case Bracton (b) demands the question, An faciunt gradum de Abbate in Abbatem sicut de hærede in hæredem? Et videtur quod non magis quam in computatione discensus, quia etsi alternetur persona, non propter hoc alternatur dignitas, sed semper manet. And herewith agreeth (c) Fleta.

Also an estate made to the King doth make no degree, and therefore if a Disseisor by Deed inrolled convey the land to the King, and the King by his Charter granteth it over, the Disseisee cannot have a Writ of Entrie in le Per & Cui, but in le Post, for the Kings Charter is so high a matter of record, as it maketh no degree.

Also an estate of a Tenant by the Curtesie, or of the Lord by Escheat, or of an execution of an use, by the Statute of 27. H. 8. or by judgement or recovery, or of any others that come in in the Post, worke no degree. (d) But a tenancie in dower by Assignement of the heire, doth worke a degree, because shee is in by her husband, but Assignement of Dower by a Disseisor, worketh no degree, but is in the Post, as hereafter shall be said in his proper place.

When the degrees are past, so as a Writ of Entry in the Post doth lye, yet by event it may be brought within the degrees againe, as if the Disseisor infeoffe A. who infeoffes B. who infeoffes C. or if the Disseisor die seised, and the land discend to A. and from him to C. now are the degrees past, and yet if C. infeoffe A. or B. now it is brought within the degrees againe.

If the Disseisor make a Lease for life, the remainder in fee, Tenant for life dyeth, he in the remainder is in the Per, because hee now claimeth immediately from the Disseisor, and both these estates make but one degree.

Note there be divers other Writs of Entry, besides this Writ of Entry Sur disseisin, whereof Littleton here speakes, as a Writ of Entry. Ad terminum qui præterijt, in casu proviso, in consimili casu, ad communem legem, sine assensu capituli, dum fuit infra ætatem, dum non fuit compos mentis, cui in vita, Sur cui in vita, Intrusion, Cessavit, and the like, and that which hath been said of one, may be applyed to all.

Bracton ubi supra.
Bracton ubi supra.
Fleta ubi supra.
4.E.2.brie 7.0.
21.H.6.8.
(b) Bract. lib.4.fol.321.
5.E.3.38.
5.E.2.entrie 60.
11.H.4.83.
(c) Fleta lib.5.cap.34.
3.H.3.entrie 41.
22.E.3.7
F.N.B.191.k.
5.E.2.entrie 66.
7.E.3.360.
(d) 36.H.6.dower.30.
44.E.3.45.39.E.3.25.
5.H.7.6.3.H.6.38.
Land discend frō A. to C. & must be read & to cannot be infeoffed by C.

Sect. 387.

CEt nota que en tiels discents, que tollent entries, il covient que home morust seisie en son demesne come de fee, ou en son demesne come de fee taile. Car un moront seisie pur terme de vie, ne pur terme dauter vie, ne unques tollent entre.

AND note that in such Discents which take away entries, it behoveth that a man die seised in his demesne as of fee, or in his demesne as of fee taile; for a dying seised for term of life, or for terme of another mans life doth never take away an entry.

CIf a disseisor make a Lease to a man & to his heires during the life of I.S. and the Lessee dyeth, living I.S. this shall not take away the entry of the Disseisee, because he that died seised had but a freehold onely, and heires in that case were added to prevent the occupant, for the heire in that case shall not have his age as it was adjudged in (d) Lambs case.

But if hee in the reversion disseise his Tenant for life, and dyeth seised, this discent shall take away the entry of the Tenant for life.

Dyer.8.El.255.
7.H.4.46. 8.H.4.15.
17.E.3.48. 12.H.4.12.
(d) Pasch.26.Eliz.in Communi Banco.
3.F.3.tit.Entr.Cong. 58.F.N.B.145.m.
9.H.7.25.a.

So it is if there be Tenant for life, the remainder in taile, the remainder in fee, and Tenant in taile disseiseth the Tenant for life and dyeth seised, this shall take away the entry of the tenant for life. 9.H.7.25.

But if the Kings Tenant for life be disseised, and the Disseisor die seised, this discent shall not take away the entry of the Lessee for life. because the Disseisor had but a bare estate of Freehold during the life of the Lessee and Littleton saith, that a discent of an estate for terme of another mans life shall not take away an entry. because y King cannot be disseised

¶ *En son demesne come de fee.* If an Infant be disseised, and the Disseisor die seised,

Temps E.1.Relese 18. Dyer 14.Eliz.308. 42.E.3.9.b. (*) 24.E.3.47.

seised, and after the infant commeth to full age and the heire of the Disseisor die before he entreth, albeit he dyed not seised of an actuall seisin, but of a seisin in Law, yet that dying seised shall take away the entry of the Disseisee. (*) And yet in pleading the second heire shall (as hath beene sayd) make himselfe heire to the disseisor, and that land shall not be recovered in value for the warranty made of other lands by the first heire; But though the first heire had but a seisin in Law, yet he is within the words of Littleton, For he was seised and dyed seised in his demesne as of fee.

Sect. 388.

AND therefore if a Disseisor make a Lease for yeares, and die seised of the Reversion, this discent shall take away the entry of the Disseisee, because hee dyed seised of the Fee and Franktenement. Like Law it is if the Land bee extended upon a Statute, Judgement, or Recognisence, and so it is in case of a Remainder.

But if he had made a Lease for life, and die seised of the reversion, this discent shall not take away the entry of the Disseisee, for that though hee had the Fee, yet he had not the Franktenement.

So it is of a Tenaunt in Tayle, mutatis mutandis, and note the Law doth ever give great respect to the Estate of Freehold, though it be but for terme of life.

If a Disseisor make a Lease for terme of his owne life, and dyeth, this discent shall not take away the entry of the Disseisee, for though the Fee and Franktenement discend to the heire of the Disseisor, yet the Disseisor dyed not seised of the Fee and Franktenement: and Littleton saith, That unlesse he hath the Fee and Franktenement at the time of his decease, such discent shall not take away the entry.

ITem un discent de reversion, ou de Remainder, ne unques tollent entry: issint que en tiels cases que tollent entries, per force de discents, il covient que celuy que mozust seisie ad Fee & Franktenement al temps d son mozant, ou Fee taile & frankt nemt al temps de son morant, ou autrement tiel discent ne tolle entre.

ALso a Discent of a Reversion or of a remainder, doth not take away an entrie. So as in those cases which take away entries by force of Discents, it behoveth that hee dyeth seised of Fee and Freehold at the time of his decease, or of Fee taile and Freehold at the time of his death, or otherwise such discent doth not take away an Entrie.

Vid.Sect.302.393.

Sect. 389.

BY this it appeareth that a Discent in the Collaterall Line doth take away an entry, as well as in the Lineall.

¶ *Moront seisie, &c.* Here (&c.) implyeth Fee simple, or Fee taile.

ITem come est dit de Discents que discendont al issue de ceux que mozont seisies. Et Mesme la Ley est lou ils nont aicun issue, mes les tenements discendont al frere, soer, uncle, ou auter cosin de celuy que mozust seisie.

ALso as it is sayd of Discents which discend to the issue of them which die seised, &c. the same Law is where they have no issue, but the Lands discend to the Brother, Sister, Uncle, or other Cousin of him which dyeth seised.

Sect.

Sect. 390.

¶ Item si soit Seignior & tenant, & le Tenant soit disseisie, & le disseisor aliena a un auter en fee, & lanienee devie sans heire, & le Seignior enter come en son escheat, en ceste case le Disseisee poit enter sur le Seignior, pur ceo que le Seignior ne vient a le Terre per discent, mes per voy descheat.

Also if there bee Lord & Tenant, and the Tenant be disseised, and the Disseisor alien to another in Fee, and the Alienee die without issue, and the Lord enter as in his Escheat: In this case the Disseisee may enter upon the Lord, because the Lord commeth not to the Land by Discent, but by way of Escheat.

¶ *Le Disseisee poit enter sur le Seignior, &c.* For albeit the Alienee of the Disseisor die seised, and the Lord by Escheat commeth to the Land by Act in Law, yet because the Land discendeth not to him, the entrie of the Disseisee in respect of the Escheat shall not be taken away. For a dying seised, and a Discent, and not a dying seised and an Escheat, doth take away the entry: for (as hath been said) the Discent is the worthier title. But in that case if the Lord by Escheat die seised, and the Land discend to his heire, that discent shall take away the entry of the Disseisee. So it is if the Disseisor die seised, and the Heire of the Disseisor dyeth without heire, the Disseisee cannot enter upon the Lord by Escheat. So as there is a diversity as touching the Discent, when after a Discent cast the Issue in taile dyeth without Issue, and when after a Discent cast, the heire in Fee simple dieth without heire, for he in the Reversion, or Remainder, upon a state taile claymeth in above the state taile, but the Lord by Escheat claimeth in under the heire in Fee simple.

237. b

37. H. 6. 19. H. 7. 24. b.

Sect. 391.

¶ Item si home seisie de certaine Terre en fee, ou en fee taile, sur condition de render certaine rent, ou sur auter condition, comẽt que tiel Tenant seisie en fee, ou en fee taile, mozust seisie, uncoze si le condition soit enfreint en lour vies, ou apres lour decease, ceo ne tollera pas lentry del Feoffor, ou del Donor ou de lour heires, pur ceo que le Tenancie

Also if a man bee seised of certaine Land in Fee or in Fee taile, upon condition, to render certain rent, or upon other condition, albeit such Tenant seised in Fee or in Fee Taile, dyeth seised, yet if the Condition bee broken in their lives, or after their decease, this shall not take away the entry of the Feoffor or Donor, or of their heires, for that the Tenancie is char-

¶ Upon these two Sections is to be observed a diversitie betweene a right, for the which the Law giveth a remedy by Action, and a title, for the which the Law giveth no remedy by Action, but by entry onely. For example, The Feoffee upon Condition in this case hath a right to the land, & therefore his entry may bee taken away, because hee may recover his right by Action, but the Feoffor or Donor that hath but a Condition, his title of entry cannot bee taken away by any Discent, because hee hath no remedy by Action to recover the land, and therefore if a Discent should take away his entry, it should barre him for ever. And the Law is all one whether the Discent were before the condition broken, or after.

33. Ass. 11. 24. 21. H. 6. 17.

33. Ass. 11. 24.

Also

Brook tit. Mortmaine 6. 47.E.3.11. 21.E.3.17.

40 Aſſ.13.

Alſo hee that hath a title to enter upon a Mortmaine, ſhall not be barred by a diſcent, becauſe then hee ſhould be without all remedy. And ſo it is in caſe where a woman hath a title to enter, Cauſa matrimonii prælocuti, no diſcent ſhall take away her entry, becauſe ſhee hath but a title, and no remedy by Action.

If a man be ſeiſed of Lands in fee, and by his laſt will in writing deviſeth the ſame to another in fee, and dyeth, after whoſe deceaſe the Freehold in Law is caſt upon the deviſee, and the heire before any entry made by the Deviſee, entreth, and dyeth ſeiſed, this Diſcent ſhall not take away the entry of the Deviſee, for if the Diſcent, which is an Act in Law, ſhould take away his entry, the Law ſhould barre him of his right, and leave him utterly without remedy. And ſo it is of him that entreth for conſent to a raviſhment, and ſo it was reſolved in the caſe of Martin Trotte of London, (n) Paſchæ 32. Eliz. in Com. Banco. And accordingly was the opinion of the Court of Common Pleas, (o) Paſch. 1. Jac. Reg. To this may bee added as a like caſe, the Kings Patentee before he enter, &c. Another reaſon wherefore a diſcent ſhall not take away the entry of him that hath a title to enter by force of a condition, &c. is, for that the condition remaines in the ſame eſſence that it was in at the time of the creation of it, and cannot be debeſted or put out of poſſeſſion as lands and tenements may.

(n) Paſch.32.Eliz.in Communi Banco. 7.R.2 Scir.Fac 3. 41.E.3.14.per Finchden.

(o) Paſch.1.Jac.Regis in Communi Banco.

eſt charge ove le condition, & leſtate del Tenant eſt conditionall en quecunque mains que le Tenancie vient, &c.

ged with the Condition, and the ſtate of the Tenant is conditionall, in whoſe hands ſoever that the tenancie commeth, &c.

Sect. 392.

CItem ſi tiel tenant ſur condic̃ ſoit diſſeiſie & le diſſeiſor devie ent ſeiſie, & la terre deſcendiſt al heire le diſſeiſor, ore le entry le tenant ſur condition, que fuiſt diſſeiſie eſt toll: Mes uncore ſi le condition ſoit enfreint, donque poit le Feoffor ou le Donor que fierent eſtate ſur condition, ou lour heires enter, Cauſa qua ſupra.

ALſo if ſuch Tenant upon Condition, be diſſeiſed, & the Diſſeiſor die therof ſeiſed, and the land deſcend to the Heire of the Diſſeiſor, now the entry of the Tenant upon condition, who was diſſeiſed, is taken away. Yet if the Condition be broken, the Feoffor or the Donor which made the eſtate upon condition, or their heires may enter, *Cauſa qua ſupra.*

Sect. 393.

¶ *DEvie ſeiſie, &c.* viz. in fee ſimple, or in fee tatle.

¶ *Et ſon heire enter, &c.* So as hee hath an actuall fee ſimple.

¶ *De la 3. part de les tenements, &c.* id eſt, in ſeveralty.

By this Section it appeareth, that an entry being taken away by the Diſcent, is revived by the endowment, albeit the Tenant in Dower ſhall have it but for her life. And the cauſe is, for that although the heire entred, yet

CItem ſi un diſſeiſor devie ſeiſie, &c. & ſon heire enter, &c. le quel endowa la feme le diſſeiſor d̃ la tierce part d̃ les tenements, &c. En ceſt cas quant a ceſt tierce part que eſt aſſigne a la feme en dower maintenant apres ceo que la feme enter, & ad le

ALſo if a Diſſeiſor die ſeiſed, &c. and his heire enter, &c. who indowes the wife of the Diſſeiſor of the third part of the Land, &c. In this caſe as to this part which is aſſigned to the wife in Dower, preſently after the wife entreth and hath the poſſeſſion of the ſame third

poſ-

poſſeſſion de meſme la tierce part, le diſſeiſee poit loyalment enter ſur la poſſeſſion le feme en meſme la tierce part. Et la cauſe eſt pur ceo que quant la feme ad ſon dower, el ſerra adjudge eins immediate per ſon baron, & nemy per lheire, & iſſint quãt a le franktenement de meſme la tierce part, le diſcent eſt defeate. Et iſſint poies veir, que devant le endowmẽt le diſſeiſee ne poit enter en aſcun part, &c. & apres le dowment il poit enter ſur la fẽe, &c. mes uncore il ne poit enter ſur les auters deux parts que lheire le Diſſeiſor ad p̃ Diſcent.

part, the diſſeiſee may lawfully enter upon the poſſeſſion of the Wife into the ſame third part. And the reaſon is, for that when the Wife hath her dower, ſhe ſhall be adjudged in immediately by her Husband and not by the Heire. And ſo as to the Freehold of the ſame third part, the Diſcent is defeated. And ſo you may ſee that before the endowment the Diſſeiſee could not enter into any part, &c. and after the endowment he may enter upon the wife, &c. but yet he cannot enter upon the other two parts which the Heire of the Diſſeiſor hath by the Diſcent.

when the Wife is endowed ſhe ſhall not be in by the heire, (a) but immediately by her Husband being the Diſſeiſor, who is in for her life by a Title Paramount the dying ſeiſed and Diſcent, and therefore in judgement of Law, the Diſcent as to the Freehold, and the poſſeſſion which the heire had, is taken away by the endowment, for that the Law adjudgeth no meane ſeiſin betweene the Husband and the wife. (a) 8.E.2.Entry.75. 19.E.2.Dower 171. 5.E.2.Entry 66. 24.E.3.32.40. 38.Aſſ.Pl.26. 43.E.3.32.45.E.3.9.b. 11.H.4.11.7.H.5.3. 10.E.3.27.28. 36.H.6.Dower 20.

If there bee Lord, Meſne and Tenant, the Meſne doth grant to the Tenant to acquite him againſt the Lord and his heires, the Lord dies, his wife hath the Seigniory aſſigned to her for her dower, and diſtreines the Tenant; albeit the grant was to acquit him againſt the Lord and his heires onely, yet becauſe ſhee continued the eſtate of her husband, and the reverſion remained in the heire, this Grant of acquittall did extend to the wife, which is a notable cauſe. 31.E.1.Meſne 55.

If after the dying ſeiſed of the Diſſeiſor, the Diſſeiſee abate, againſt whom the wife of the Diſſeiſor recover by confeſſion in a writ of dower, in that caſe, though the Diſcent bee avoided as Littleton here ſaith, yet the Diſſeiſee ſhall not enter upon the Tenant in Dower, becauſe the recovery was againſt himſelfe; but if he had aſſigned Dower to her in pais, ſome ſay he ſhould enter upon her.

A man makes a gift in taile, reſerving twentie ſhillings Rent, and dyes, the Donee takes wife, and dyeth without Iſſue, the Heire of the Donor entreth and endoweth the wife, ſhe is ſo in of the eſtate of her Husband, that albeit the eſtate taile bee ſpent, and the rent reſerved thereupon determined, yet after ſhe be endowed, ſhe ſhall be attendant to the heire in reſpect of the ſaid rent. And ſo it is of Lord and Tenant, the wife that is endowed, ſhall be attendant for the due Services, but if any Services be encroached, albeit that incroachment ſhall bind the heire, yet the wife ſhall be contributory, but for the Services of right due. 10.E.3.26.

¶ *Iſſint poies vier que devant le dowment le diſſeiſee ne poit enter, & apres lendowment il poit enter, &c.* The like hath bin ſaid before in this Chapter, Sect.386. where the entry of the Diſſeiſee may be taken away for a time, and by matter ex poſt facto, revived againe.

Note, albeit the Diſſeiſor after a Diſcent taketh to him but an eſtate for life, yet when the Diſſeiſee doth enter upon him, he ſhall thereby deveſt the Reverſion, for the eſtate of Freehold is that whereupon a Præcipe doth lie, and therefore the entry of the Diſſeiſee is as available in Law, as if he had recovered it in a Præcipe. And ſo it is, if a Diſſeiſor makes leaſe for life, and grant the reverſion to the King, the entry of the Diſſeiſee upon the Tenant for life ſhall devеſt the Reverſion out of the King in the ſame manner, as if the Diſſeiſee had recovered the lands againſt the Tenant for life in a Præcipe. Vid.Sect.301.388. 25.E.3.48. Pl.Com.553.

Sect. 394.

¶ EN *ceſt caſe jeo poy enter ſur le poſſeſſion liſſue, &c.*

Vid.9.H.7.24.& 37.H.6.1.

For here was but a Diſcent of a Reverſion at the time of the dying ſeiſed, for the eſtate of the Tenant by the courteſie, had commencement by the having of iſſue, and is conſummate by the death of the wife, ſo as the fee & frankstenement did not after the deceaſe of the Wife deſcend to the Heire, and albeit the Tenant by the courteſie dyeth afterwards, and that the frankstenement is caſt upon the Heire, ſo as now hee hath the fee and frankstenement by Diſcent, yet becauſe the Heire came not to the fee and frankstenement at once, immediatly after the deceaſe of the wife, ſuch a mediate Diſcent ſhall not take away the entry of the Diſſeiſee. On the other ſide, an immediate diſcent may take away an entry for a time, and mediately may be avoided by matter ex poſt facto, as hath been ſaid. But if a dying ſeiſed taketh not away the entry of him that right hath at the time of the Diſcent, it ſhall not by any matter ex poſtfacto take away his entry.

See before the Chapter of Homage.

v.238.b.2 & 395.[408, 409.

If a Diſſeiſor die without Heire, his wife privement enſeint with an iſſue, and after the iſſue is borne, ſuho entreth into the Land, he hath the Land by Diſcent, and yet thereby the entry of the Diſſeiſee ſhall not bee taken away, becauſe as Littleton here ſaith, the iſſue commeth not to the Lands immediately by Diſcent, after the deceaſe of the Father.

And ſo it is if a Diſſeiſor make a gift in taile, the remainder in fee, and the Donee dyeth without iſſue leaving his wife privement enſeint with a Sonne, and he in the remainder enters, and after the Sonne is borne, ſuho entreth into the Land, this Diſcent ſhall not take away the entry of the Diſſeiſee, Cauſa qua ſupra.

¶ *Contrarium tenetur, &c.* This is an addition, and therefore to be paſſed over. And at this day this caſe of Littleton is holden for cleere Law.

¶ Item, ſi un feme ſoit ſeiſie de terre en fee, dont jeo aye droit & title dentre, ſi la feme prent baron, & ont iſſue enter eux, & puis la feme devie ſeiſie, & apres le baron devie, & iſſue enter, &c. en ceſt caſe jeo poy enter ſur le poſſ. iſſue, pur ceo que iſſue ne vient a les tenents immediate per Diſcent apres la mort ſa mere, &c. eins per le mort del pier.

¶ Contrarium tenetur P.9.Hen.7. per tout le court, & M.37. H.6. ¶.

ALſo if a woman bee ſeiſed of land in fee, whereof I have right & title to enter, if the woman take husband and have iſſue betweene them, and after the wife die ſeiſed, and after the husband die, and the iſſue enter, &c. In this caſe I may enter upon the poſſeſſion of the iſſue, for that the iſſue comes not to the lands immediately by Diſcent after the death of the mother &c. but by the death of the father.

¶ *Contrarium tenetur P.9.H.7. per tout le court, & M.37.H.6.* ¶.

Sect. 395.

¶ Item, ſi un diſſeiſor enfeoffa ſon pier en fee, & l'pier mort, uncle eſt eſtate ſeiſie, p q les terres diſcendront a l'diſſeiſor, come fits & heire, &c. en ceſt caſe l'diſſeiſee bien poit enter ſur le diſſeiſor, nient obſtant le Diſcent,

ALſo if a Diſſeiſor infeoffe his father in fee, and the father die ſeiſed of ſuch eſtate, by which the land diſcend to the Diſſeiſor, as ſonne and heire, &c. In this caſe the Diſſeiſee may well enter upon the Diſſeiſor, notwithſtanding the

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pur ceo que quant al diſſeiſin, le diſſeiſor ſerra adjudge eins forſque come diſſeiſor, nient obſtant de diſcent, Quia particeps criminis.

diſcent for that as to the diſſeiſin, the diſſeiſor ſhall bee a judged in but as a diſſeiſor notwithſtanding the Diſcent, *Quia particeps criminis.*

OF this ſufficient hath beene ſaid before in this Chapter, Sect.386. And regularly it is true that albeit a Diſcent be caſt, and the entry of the Diſſeiſee taken away, yet if the Diſſeiſor commeth to the land againe, either by diſcent or purchaſe of any eſtate or freehold which is implyed in the (&c.) the Diſſeiſee may enter upon him, or have his aſſiſe againſt him, as if no diſcent or meane conveyance had beene, Quia particeps criminis.

15.E.4.13.a.11.E.4.2.
18.E.4.25.a. 33.H.6.5.b.
34.H.6.11.12.H.8.9.
24.H.8.3.9.18.H.8.5.
5.H.7.29.Aſſ.54.
39.E.3.25.26.

*Sect.*396,397.

ITem ſi home ſeiſie de certaine terr̃ ẽ fee ad iſſue deux fits, & morust ſeiſie, et le puiſne fits entra p abatement en la terre, quel ad iſſue, et de ceo morust ſeiſie, et les tenemẽts diſcendont al iſſue, et l'iſſue entra en la terre, en ceſt caſe le fits eigne, ou ſon heire, poit enter p la ley ſur iſſue del fits puiſne, nient contriſtiant le diſcent, pur ceo que quant le fits puiſne abatist ẽ la terr̃ apres l'mort ſon pier devant alcun entrie per le fits eigne fait, la ley intendra que il entra enclaymant come heire a ſon pier, & pur ceo q̃ leigne fits clayma per meſme le title, ceſtaſcavoir, come heire a ſon pier, il & ſes heires poient enter ſur iſſue de puiſne fits, nient obſtant le diſcent, &c. pur ceo que ils clay-

ALſo if a man ſeiſed of certaine land in fee have iſſue two ſons, and die ſeiſed, and the younger ſonne enter by abatemẽt into the land, and hath iſſue, & dyeth ſeiſed thereof, and the land diſcend to his iſſue, and the iſſue enters into the land; in this caſe the eldeſt ſonne or his heire may enter by the Law upon the iſſue of the younger ſon notwithſtanding the Diſcent, becauſe that when the younger ſon abated into the land after the death of his father before any entry made by the eldeſt ſonne, the law intend that hee entred claiming as heire to his father. And for that the eldeſt ſonne claymes by the ſame title, that is to ſay, as heire to his Father, hee and his heires may enter upon the iſſue of the younger ſon, notwithſtanding the diſ-

CEN *ceſt caſe le fits eigne, &c. poit entrer ſur liſſue del fitz puiſne, &c.* And the reaſon hereof is, for that the Law intendeth the youngeſt ſonne entred clayming the Land as heire to his Father, and becauſe the eldeſt Sonne claymeth alſo by the ſame title, viz. as heire to his Father, therefore hee and his heires may enter upon the ſecond Sonne and his heires, in reſpect of the privity of the bloud betweene them, and of the ſame clayme by one title, albeit the youngeſt Son gained a fee ſimple by his entrie: for Littleton here calleth it an abatement, which proveth the gaining of a fee ſimple,

And it is to be obſerved, that, Aſſiſa mortis anteceſſoris non tenet inter conjunctas perſonas ſicut fratres & ſorores, &c. For theſe are privy in bloud, but it lyeth againſt ſtrangers, and then damages are to be recovered againſt a ſtranger, but not againſt his brother.

Bract.lib.4.fol.261.
282 283.
Britton, fol.180,181.
Fleta, lib.5.cap.1.2 &c.
20.E.3.Darr.preſent.13.
12.H.3.Mord.pl.ultim.
13.E.1.Mord.47.
29.Aſſ.11.F.N.B.196.b.

Lands were given to the Husband and Wife, and to the Heires of their two bodies, they had iſſue a Daughter, the wife died, the Husband had iſſue by another wife foure Sons and died, the eldeſt Sonne abated

Paſch.3.E.3.Coram Rege Kanc.in Theſaur.

abated and dyed seised, this Discent did take away the entrie of the daughters, because they claimed not by one title. And in ancient bookes the eldest sonne is called Hæres propinquus, and the younger sonne Hæres remotus. And albeit the eldest Son hath issue and dyeth, and that after his decease the youngest son or his heire entreth, and many Discents be cast in his line, yet may the heirs of the eldest sonne enter in respect of the priviti of the blond, and of the same claime by one title; but if the youngest sonne make a Feoffment in fee, and the Feoffee die seised, that Discent shall take away the entry of the eldest, in respect that the privity of the blond faileth. And admit that the youngest sonne be of the halfe blond to his brother, yet hee is of the whole blond to his father; and therefore if he entreth by abatement, and dieth seised, it shall not barre his elder brother of his entry. But if the eldest sonne entreth, and gaineth an actuall possession and seisin, then the entrie of the youngest is a disseisin. And then a dying seised shall take away the entry of the eldest, for Possessio terræ must bee Vacua when the youngest sonne enters by abatement, as Littleton saith, because he hath more colour in that case to claime, as heire to his father, who last was actually seised. Therefore if after the decease of the father, an estranger doth first enter and abate, upon whom the youngest Son entreth and disseise him and die seised, this Discent shall bind the eldest, for hee entred by disseisin, and not by abatement.

3.E.2.Ass.380.
40.E.3.24 b. 29.Ass.24.

Vid.Brooke tit.Entrie 27.

If a man bee seised of lands of the nature of

mont per un mesme title. Et en mesme le manner il serra, si fueront pluiors discents de un issue a un auter issue del puisne fits.

scent, &c. because they claime by the same title. And in the same maner it shall be, if there were more discents from one issue to another issue of the younger sonne.

Sect. 397.

CMes en tiel case, si le pier fuit seisie de certaine terres en fee, & ad issue deux fits & devie, et leigne fits enter, & est seisie, &c. & puis le puisne frere luy disseisist, p̄ q̄l disseisin il est seisie en fee, & ad issue, & de tiel estat morust seisie, donques leigne frere ne poit entrer, mes est mis a son briefe Dentre sur disseisin, &c. de recoverer la terre. Et la cause est, p̄ ceo que le puisne frere dient a les tenements p̄ tortious disseisin fait a son eigne frere, et per cel tort la Ley ne poit entender que il claime come heire a son pier, nient pluis que un estrange person que ust disseisie leigne frere q̄ navoit action title, &c. Et issint poyes veier la diversitie, lou le puisne frere enter apres le mort le pier devant action entrie fait per leigne frere en tiel cas, & ou leigne

BUt in this case if the Father were seised of certaine lands in fee, and hath issue two sons and die, and the eldest son enter and is seised, &c. and after the yonger brother disseiseth him, by which disseisin he is seised in fee, and hath issue, and of this estate dieth seised, then the elder brother cannot enter, but is put to his Writ of *Entrie sur disseisin, &c.* to recover the land. And the cause is, for that the youngest brother commeth to the lands by wrongfull disseisin done to his elder brother, and for this wrong the Law cannot intend that he claimeth as heire to his father, no more than if a stranger had disseised the elder brother which had no title, &c. And so you may see the diversity where the younger brother entreth after the death of the father before any entry made by the elder brother in this

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frere enter apres la mort ſon pier, & puis eſt diſſeiſie p le puiſne frer, lou le puiſne frer puis mort ſeiſie.

caſe, and where the elder brother enters after the death of his father, and after is diſſeiſed by the younger brother, where the younger after dieth ſeiſed.

Burgh Engliſh, and hath iſſue two ſonnes, and die, and the eldeſt ſonne before any entrie made by the youngeſt, entreth into the land by abatement, and dyeth ſeiſed, this ſhall not take away the entry of the youngeſt brother. Et ſic de ſimilibus. And theſe and the like caſes are all within the reaſon and rule of our Author. And where our Author ſpeaketh only of an abatement, ſo it is not an intruſion; For if the Father make a Leaſe for life, and hath iſſue two ſonnes and dyeth, and the Tenant for life dieth, and the youngeſt ſonne intrude, and die ſeiſed, this Diſcent ſhall not take away the entry of the eldeſt. But if the Father had made a Leaſe for yeares, it had beene otherwiſe, for that the poſſeſſion of the Leſſee for yeares maketh an actuall freehold in the eldeſt ſonne. And it is to be obſerved that the reaſon of Littleton in this caſe (for that both the brethren hold by one title) holdeth alſo in many other caſes.

If two Coparceners make partition to preſent by turne, and one of them uſurpe in the turne of the other, this uſurpation ſhall not put the other out of poſſeſſion, becauſe they claime by one title. 22.E.44.

If two Coparceners be, and they ſeverally preſent to the Ordinary, yet the Church is not litigious, becauſe they claime all by one title. Doct. & Stud. cap. 30. fol. 117.

If upon a writ of Diem clauſit extremum, the youngeſt ſonne bee found heire, the eldeſt ſon had no remedy by the Common Law, becauſe they claymed by one title, but otherwiſe it is, if they claime by ſeverall titles, as is appeareth in our bookes. But this is now holpen by a (*) Statute made ſince Littleton wrote. 12.E.4.18. (*) 2.E.6.cap.8.

If two Parſons bee in debate for tithes, which amount to above the fourth part, and one man is Patron of both Churches, no Indicavit doth lye: for that both Incumbents claime by one and the ſame Patron, Et ſic de ſimilibus. 2.H.7.12.2. See the Section next following.

And where Littleton ſaith, ſeiſed of lands in fee, the ſame Law it is if a man bee ſeiſed of lands in tayle, and hath iſſue two ſonnes, Mutatis mutandis.

¶ *Et eſt ſeiſie, &c.* That is to ſay, actually ſeiſed, either by entry, as Littleton here putteth it, or by poſſeſſion of the Leſſee for yeares, or the like.

¶ *Navoit aſcun title, &c.* That is to ſay, any pretence or ſemblance of title, as the younger brother here hath, and in many other caſes, there is a great diverſity holden in our bookes (o) where one hath a colour or pretence of right, and when he hath none at all, whereof you may read plentifully in our bookes. (o) 1.E.2.baſtardie 19. 21.E.3.34. 22.Aſſ.85. 39.E.3.26. 17.E.3.59. 11.E.3.Aſſ.88. 21.H.6.14. 11.E.3.age.3. Vid. Sect. 400. & cap. Garranty

Sect. 398.

¶ EN meſme le maner eſt, ſi home ſeiſie de certaine tre en fee ad iſſue deux files & devie, leigne file entra en la terre claymant tout la terre a luy, & ent ſolement puiſt les profits & ad iſſue & mort ſeiſie, per que ſon iſſue enter, quel iſſue ad iſſue & devie ſeiſie, & ſecond iſſue ēter, & ſic ultra, uncore le puiſne file ou ſon iſſue, quant a le moitie poit enter ſur quecunque iſſue de leigne file, nient obſtant tiel

IN the ſame manner it is, if a man ſeiſed of certaine land in fee, hath iſſue two daughters and dyeth, the eldeſt daughter entreth into the Land, clayming all to her, and thereof only taketh the profits, and hath iſſue and dieth ſeiſed, by which her iſſue enter, which iſſue hath iſſue and dieth ſeiſed, and the ſecond iſſue enter, *& ſic ultra*, yet the younger daughter or her iſſue as to the moity may enter upon any iſſue whatſoever of the elder

diſcent, pur ceo que ils claimont per un meſme title, &c. mes en tiel caſe ſi ambideux Soers avoyent enter apres la mort lour Pier, & ent fueront ſeiſies, & puis leigne Soer uſt diſſeiſie la puiſne Soer de ceo que a luy affiert, & ent fuit ſeiſie en fee & ad iſſue, & de tiel eſtate mort ſeiſie, per que les Tenements diſcendont al Iſſue del eigne Soer, donque le puiſne Soer, ne ſes heires ne poient enter, &c. Cauſa qua ſupra, &c.

daughter notwithſtanding ſuch diſcent, for that they claime by one ſame title, &c. but in ſuch caſe where both ſiſters have entred after the death of their father, and were thereof ſeiſed, and after the eldeſt ſiſter had diſſeiſed the younger of her part, and was thereof ſeiſed in Fee, and hath Iſſue, and of ſuch Eſtate dieth ſeiſed, whereby the lands deſcend to the Iſſue of the elder ſiſter, then the younger ſiſter nor her heires cannot enter, &c. *Cauſa qua ſupra, &c.*

21.Aſſ.19. 21.E.3.7.27. 32.16.Aſſ.2,27.Aſſ.68. 36.Aſſ.p.1. 43.E.3.19. 4.H.7.10. 16.H.7.4.

¶ *Claimont tout la terre.* Here it appeareth, That when the one Copartener doth ſpecially enter, claiming the whole land, and taking the whole profits, that ſhe gaines the one moity, viz. of her ſiſter by abatement, and yet her dying ſeiſed ſhall not take away the entry of her ſiſter, whereas when one Copartener enters generally and taketh the profits, this ſhall be accounted in Law the entry of them both, and no diveſting of the moity of her ſiſter.

If one Copartener enter claiming the whole, and make a feoffment in Fee, and take backe an eſtate to her and her heires, and hath Iſſue and die ſeiſed, this Diſcent ſhall take away the entry of the other ſiſter, becauſe by the Feoffement the privity of the Copartenary was deſtroyed.

¶ *Claimont per un meſme title, &c.* Of this ſufficient hath beene ſaid in the next precedent Section.

¶ *Ne poient enter, &c.* Of this there hath been alſo ſpoken in the ſame Section.

Sect. 399.

Pl.Com.57.39.E.3. Le darreine caſe.

¶ *Eiſie en fee.* For this holds not in caſe of an eſtate taile.

Lib.8.fol.101,102. Sir Rich.Lechfords caſe.

¶ *Mulier, ſeu filius mulieratus.* *Mulier* hath three ſignificatiõs; **Firſt**, Sub nomine mulieris continetur quælibet Fæmina. **Secondly**, Propriè ſub nomine mulieris, continetur Virgo. **Thirdly**, Appellatione mulieris in Legibus Angliæ, continetur Uxor. Et ſic filius natus vel filia nata ex juſta uxore, appellatur in Legibus Angliæ filius mulieratus, ſeu filia mulierata, **a ſonne** mulier, **or a daughter** mulier, Sicut Baſtardus dicitur à Græco verbo Baſſaris, i. Meretrix, ſeu Concubina, quia procreatur ex meretrice ſeu

Glanvil.lib.7.cap.2. Bra.lib.5.cap.19. Brit.c.p.70.

Vid.Sect.188.

¶ Item ſi home eſt ſeiſie de certaine Terre en fee, & ad iſſue deux fits, & leigne fits eſt Baſtard, & l'puiſne fre eſt mulier, & le Pier devie, & le Baſtard enter enclaimant cõe heire a ſon pier, & occupia la terre tout ſa vie ſans aſcun entre fait ſur luy per l'mulier, & le Baſtard ad iſſue & mort ſeiſie de tiel eſtate en fee,

Alſo if a man bee ſeiſed of certaine Lands in fee, and hath Iſſue two Sonnes, and the elder is a Baſtard, and the younger *Mulier*, and the father die, and the Baſtard entreth claiming as heire to his Father, and occupyeth the Land all his life, without any entry made upon him by the *Mulier*, and the Baſtard hath Iſſue and dyeth ſeiſed

&

& la Terre discendist a son Issue, & son Issue enter, &c. En cest case le mulier est sans remedy, car il ne poit enter, ne aver ascun Action pur recoverer la Terre, pur ceo que est un auncient Ley en tiel case use, &c.

of such estate in Fee, and the Land descend to his Issue, & his Issue entreth, &c. In this case the *Mulier* is without remedie, for he may not enter, nor have any Action to recover the land, because there is an ancient law in this case used, &c.

concubina. In English, hee is called base borne, and thereupon some say, That a Bastard is as much to say, as one that is a Base Naturall, for Aërd signifieth Nature. I read in Fleta, (p) That there be three kinds of Bastards, viz. Manser, Nothus & Spurius, which are described in two old verses;

Manseribus scortum, Notho mœchus dedit ortum.
Ut seges è spica, sic Spurius est ab amica.

(p) Fleta lib. 1. cap. 5. Vide Sect. 380.

But we terme them all by the name of Bastards that be borne out of lawfull marriage. By the Common Law, (r) if the Husband be within the foure Seas, that is, within the Jurisdiction of the King of England, if the Wife hath Issue, no proofe is to be admitted to prove the Childe a Bastard, (for in that case, Filiatio non potest probari) unlesse the Husband hath an apparent impossibility of procreation, as if the Husband be but eight yeares old, or under the age of procreation, such Issue is Bastard, albeit he be borne within marriage. (t) But if the Issue be borne within a moneth or a day after marriage, between parties of full lawfull age, the child is legitimate.

(r) Bract. lib. 4. fo. 278, 279. 7. H. 4. 9. 43 E. 3. 19. 41. E. 3 7. 44. E. 3. 10. 29. Ass. 54. 38. Ass. 14. 1. H. 6. 7. 19. H. 6. 17. 39. E. 3. 13.
(t) 18. E. 4. 28.

¶ *Discendist a son issue.* For if the Bastard dyeth seised without Issue, and the Lord by Escheat entreth, this dying seised shall not barre the Mulier, because there is no Discent. If the Bastard enter, and the Mulier dyeth, his wife privement enseint with a Son, the Bastard hath Issue and dyeth seised, the Sonne is borne, his right is bound for ever. But if the Bastard dyeth seised, his Wife enseint with a Sonne, the Mulier enter, the Son is borne, the Issue of the Bastard is barred: for Littleton putteth his case, that there must not only be a dying seised, but also a Discent to his Issue.

¶ *Et son issue enter, &c.* And so it is to be understood, albeit the Mulier after the decease of the Bastard, doth enter before the Heire of the Bastard, for the Discent bindeth, and not the entry of the Heire.

¶ *Le mulier est sans remedie.* Hereby it appeareth that this Discent differeth from other Discents, for this Discent barreth the right of the Mulier, whereas other Discents do take away the entry onely of him that right hath, and leaveth him to his Action, but here by the dying seised of the Bastard, his Issue is become lawfull Heire. (a) It is holden, that if the Mulier be within age at the time of the dying seised, that nevertheless hee shall bee barred, because the Issue of the Bastard is in judgement of Law become lawfull Heire, and the Law doth preferre Legitimation before the privilege of Infancie.

402

And the reason of this case is, for that Justum non est aliquem post mortem facere bastardum, qui toto tempore vitæ suæ pro legitimo habebatur. And so it seemeth to bee, That if a man hath Issue a Sonne being Bastard eigne, and a Daughter, and the Daughter is married, the Father dyeth, the Sonne entreth and dyeth seised, this shall barre the Feme Covert. And the Discent in this case of Services, Rents, Reversions, expectant upon Estates Taile, or for life, whereupon Rents are reserved, &c. shall binde the right of the Mulier, but a Discent of these shall not drive them that right have to an Action.

So if the Bastard dyeth seised, and his Issue endoweth the wife of the Bastard, yet is not the entry of the Mulier lawfull upon the Tenant in Dower, for his right was barred by the Discent. *N. diff. betw. Discent wch takes away entry only, & discent wch takes away right.*

If the Bastard eigne entreth into the Land, and hath Issue, and entreth into Religion, this Discent shall barre the right of the Mulier.

¶ *A di issue deux fits.* If a man hath Issue, such a Bastard as is aforesaid, and dieth, and the Bastard entreth & dyeth seised, and the Land descendeth to his Issue, the Collaterall Heire of the Father is bound, as well as where there be two Sonnes.

And where our Author speaketh of Sonnes, so it is, if a man hath Issue two Daughters, the eldest being a Bastard, and they enter and occupy peaceably as Heires, now the Law in favour of Legitimation, shall not adjudge the whole possession in the Mulier, (who then had the only right) but in both, so as if the Bastard hath Issue and dyeth, her Issue shall inherit.

(a) 5. E. 2. Discent Br. 49. 31. Ass. 18. 22. 33. E. 3. Verdict 48. 36 Ass. 2. Pl. Com Stowels case. 10. E. 3. 2. 13. E. 1. tit. Bastardy 28. 14. E. 2. Bastardie 26.

Lib. 8. 101, 102. Sir Rich. Lechfords case.

See afterwards in the Chapter of Warranties.

(b) And

(b) And in the same case, if both daughters enter & make partition, this partion shall binde the Mulier for ever.

(c) And an Assise of Mortdancester lyeth not between the Bastard and the Mulier in respect of the proximity of bloud.

And the Bastard being impleaded or vouched shall have his age.

(l) 2. E 3. tit. Bastardy 15. 21. E. 3. 14. b. 30. Ass. p. 7. Sir Rich. Lechfords case, ubi supra.

(c) Brit cap. 73. 20. E. 3. Vouch. 129. 11. H. 3. Age 3. 5. H. 7. 2. Sir Rich. Lechfords case, ubi supra.

¶ *Et le Bastard enter come heire a son pier.* If a man hath Issue Bastard eigne and Mulier puisne, and the Bastard in the life of the Father hath Issue and dyeth, and then the Father dyeth seised, and the Sonne of the Bastard entreth as heire to his Grandfather, and dyeth seised, this Discent shall bind the Mulier.

¶ *Pur ceo que cest antient Ley en tiel case use, &c.* As hereafter in our Commentary upon the two next Sections shall appeare, by our ancient Bookes, and the ancient Statutes of the Realme. And here is implyed how necessary it is after the example of our Author, to looke into the Antiquities, than which nothing is more venerable, profitable and pleasant.

Sect. 400.

¶ MEs il ad estre lopinion dascuns, que ceo serra intendue lour pier ad un fits bastard per un feme, & puis espousa meisme la feme, & apres lespousels il ad issue per meisme la feme un fits, ou un fille mulier, & puis le pier morust, &c. si tiel Bastard enter, &c. & ad Issue & devie seisie, &c. donque avera lissue de tiel Bastard le Terre cleerement a luy, come avant est dit, &c. & nemy ascun auter bastard la mere, que ne fuit unque espouse a son pier, & ceo semble bone & reasonable opinion. Car tiel Bastard nee devant espousels celebres perenter son pier & sa mere, per la Ley de Saint Esglise est mulier, coment que per la Ley del Terre il est Bastard, & issint il ad un colour dentrer come heire a son pier, pur ceo que il est per un Ley mulier, &c. s. p la Ley de Saint Esglise. Mes autermt est de bastard que nad ascun maner colour dentre come heire, entant que il ne poit per nul Ley estre dit mulier, car tiel Bastard est dit en la Ley, Quasi nullius filius, &c.

But it hath beene the opinion of some, That this shall be intended where the Father hath a Sonne Bastard by a woman, and after marrieth the same woman, and after the espousels he hath issue by the same woman a son or a daughter, and after the Father dieth, &c. if such Bastard entreth, &c. & hath issue and die seised, &c. then shall the issue of such Bastard have the land cleerly to him, as it is said before, &c. and not any other Bastard of the Mother which was never married to his Father, and this seemeth to be a good and reasonable opinion: for such a Bastard borne before marriage celebrated betweene his Father and his Mother, by the Law of holy Church is *Mulier*, albeit by the Law of the Land he is a Bastard, and so he hath a colour to enter as heire to his Father, for that he is by one Law *Mulier*, s. by Law of Holy Church. But otherwise it is of a Bastard which hath no manner of colour to enter as Heire, in so much as hee can by no Law be said to bee *Mulier*, for such a Bastard is said in the Law to be *Quasi nullius filius, &c.*

Mes

Mes ad eſte lopinion daſcuns, &c. And our Author here ſaith, that this opinion is good and reaſonable, for that ſuch a Baſtard, by the Law of holy Church, (*) is a Mulier.

(*) Vid. Britton fol. 128. b. 166. 203. And the Statute of Mert. 20. H. 3. cap. 19. confirmeth this opinion. Hil. 18. E. 3. coram Rege in Theſaur. Eborum. Bract. lib. 2. fol. 63.

Matrimonium ſubſequens legitimos facit quoad ſacerdotium non quoad ſucceſsionem, propter conſuetudinem regni quod ſe habet in contrarium. Yet the Canon Law holdeth them Legitimate quoad ſucceſsionem. At a Parliament holden (q) Anno 20. H. 3. for that to certifie upon the Kings Writ, that the ſonne borne before marriage is a Baſtard, was Contra Communem formam Eccleſiæ, rogaverunt omnes Epiſcopi Magnates ut conſentirent, quod nati ante matrimoniam eſſent legitimi, ſicut illi qui nati ſunt poſt matrimonium quantum ad ſucceſsionem hæreditarium, quia Eccleſia tales habet pro legitimis: Et omnes Comites & Barones una voce reſponderunt, Quod nolunt Leges Angliæ mutare, quæ huc uſque uſitatæ ſunt & approbatæ.

(q) Statut. de Merton. 20. H. 3. cap. 9. Vid. Bract. l. 5. f. 416, 417. 10. Aſſ. Pl. 20.

¶ *Iſsint que il ad un colour dentre, &c.* Here it is to be obſerved, That the Law more reſpecteth him that hath a colourable title, though it be not perfect in Law, than him that hath no title at all, as hath been ſaid (r) before.

(r) Vid. Sect. 397. & cap. garr. Sect.

Sect. 401.

CMes en le caſe avãt dit, lou le Baſtard enter apres la mort le pier, & l'mulier luy ouſta, & puis le Baſtard diſſeiſt le mulier, & ad iſſue, et devie ſeiſie, et liſſue enter, dõq̃ le mulier poit aver briefe Dentre ſur diſ. enverſ liſſue del Baſtard et recovera la terre, &c. Et iſſint poies vier le diverſitie lou tiel Baſtard continue la poſſ. tout ſa vie ſans interruption, & lou le mulier enter & interrupt le poſſeſſion de tiel Baſtard, &c.

But in the caſe aforeſayd, where the Baſtard enter after the death of the Father, and the mulier ouſt him, and after the Baſtard diſſeiſe the mulier, and hath iſſue and dieth ſeiſed, and the iſſue enter, then the mulier may have a Writ of *Entrie ſur diſſeiſin* againſt the iſſue of the Baſtard & ſhall recover the Land, &c. And ſo you may ſee a diverſity where ſuch Baſtard continues the poſſeſſion all his life without interruption, and where the mulier entreth and interrupts the poſſeſſion of ſuch Baſtard, &c.

¶ *Et le mulier luy ouſta.* An eſtranger in the name of the Mulier without his commandement cannot enter upon the Baſtard, for that the Baſtard may gain the eſtate and barre the Mulier. And therefore regularly none ſhall enter but the Mulier, or ſome other by his commandement. And therefore Littleton ſaith (and the Mulier put him out) no more than in the caſe (a) of the Lord Awdley: for there an eſtranger of his owne head could not enter in the name of him that right had to enter within the five yeares to avoid the Fine. But in both thoſe caſes, firſt, if the Mulier agree thereunto before the diſcent of the Baſtard; or ſecondly, if hee that right hath before the five yeares be paſt do aſſent thereunto, the claim is good, and ſhall avoyd the eſtate both of the Baſtard, & of the Conuſee, as it was holden in the Lord Awdleys Caſe, Quia omnis ratihabitio retrotrahitur, & mandato equiparatur, and it ſtandeth well with the words of the Statute, ſo that they purſue their title, &c. by way of Action or Entry, and ſo is the booke in (b) 31. H. 8. to be intended.

(a) Mich. 38. & 39. Eliz. in the Kings bench upon evidence by the whole Court. Vid. 31. H. 3. entr. Conge. Br. 123. Rep. 9. fol. 106. Pl. Com. 413 a. 4. H. 7. cap.

Vid. Sect. 334.

(b) 31. H. 8. entr. conge. Br. 123. 206. b.

But in the caſe of the Baſtard eigne, which is Littletons caſe, Gardein in Hocage, or Gardeine in Chivalrie may enter, for they are no ſtrangers, as in another place is plainly ſhewed. If an Infant make a feoffment in fee, an eſtranger of his owne head cannot enter (c) to the uſe of the Infant, for the eſtate is voidable. But where an Infant or a man of full age is diſſeiſed, an entry by a ſtranger of his owne head is good and veſteth preſently the eſtate in the Infant, or other diſſeiſee. So it is if Tenant for life make a feoffment in fee, an eſtranger may enter for a forfeiture in the name of him in the Reverſion, and thereby the eſtate ſhall be veſted in him, Et ſic de ſimilibus.

(c) Paſch. 39. El. in Communi Ban. per Curiam. 10. H. 7. 16. 7. E. 3. 69. 26. E. 3. 62. per Thorp. 45. E. 3. 1 cleare 28. 11. Aſſ. 11.

¶ *Lou*

¶ *Lou tiel Baſtard continue tiel poſſeſsion ſans interruption.* If the Mulier entreth upon the Baſtard, and the Baſtard recovereth the Land in an Aſſiſe againſt the Mulier, now is the Interruption avoyded, and if the Baſtard dieth ſeiſed, this ſhall barre the Mulier.

2.Aſſ.9. If the Baſtard eigne after the deceaſe of the father entreth, & the King ſeiſeth the land for ſome contempt ſuppoſed to be committed by the Baſtard, for which no Freehold or Inheritance is loſt, but only the profits of the Land by way of ſeiſure, and the Baſtard die, and his Iſſue is upon his Petition reſtored to the poſſeſſion, for that the ſeiſure was without cauſe, the mulier is barred for ever, for the poſſeſſion of the King when hee hath no cauſe of ſeiſure ſhall be adjudged the poſſeſſion of him for whoſe cauſe he ſeiſed. But if after the death of the father the mulier be found heire and within age, and the King ſeiſeth, in that caſe the poſſeſſon of the King is in right of the mulier, and veſteth the actuall poſſeſſion in the mulier, and conſequently the Baſtard eigne is fore-cloſed of any right for ever.

And ſo it is, when the King ſeiſeth for a contempt, or other offence of the Father, or of any other Anceſtor, in that caſe, if the iſſue of the Baſtard eigne upon a Petition bee reſtored, for that the ſeiſure was without cauſe, the mulier is not barred, for the Baſtard could never enter, and conſequently could gaine no eſtate in the Land, but the poſſeſſion of the King in that caſe ſhall be adjudged in the right of the mulier. And it is to be obſerved, that the Baſtard muſt enter in vacuam poſſeſsionem, and continue during his life, without interruption made by the Mulier.

Pl.Com. Parſon de Honylanes caſe 91. 35.H.6.24.21.H.6.9. 1.E.4.3.21.E.4.5.5.E. 4.60. ¶ *Interrupt le poſſeſsion del Baſtard, &c.* If the Baſtard invite the mulier to ſee his Houſe, & to ſee Pictures, &c. or to dine with him, or to Hawk, Hunt, or Sport with him, or ſuch like upon the Land deſcended, and the mulier commeth upon the Land accordingly, this is no interruption, becauſe he came in by the conſent of the Baſtard, and therefore the comming upon the Land can be no treſpaſſe, but if the mulier commeth upon the ground of his owne head, and cutteth downe a tree, or diggeth the ſoile, or take any profit, theſe ſhall be interruptions, for rather than the Baſtard ſhall puniſh him in an Action of Treſpaſſe, the Act ſhall amount in Law to an Entry, becauſe he hath a right of Entry. So it is, if the mulier put any of his beaſts into the ground, or command a ſtranger to put on his beaſts, theſe doe amount to an Entry, for albeit in theſe caſes the mulier doth not uſe any expreſſe words of Entry, yet theſe, and ſuch like Acts, doe without any words amount in Law to an Entry, for Acts without words may make an Entry, but words without an Act (viz. Entry into the Land, &c.) cannot make an Entry, (all which interruptions are implyed in the ſaid, &c.) More ſhall be ſaid hereafter of Interruptions in the chapter of Continuall Claime.

Sect.402.

Brooke tit.diſcent.40. ¶ *Si un enfant deins age ad cauſe dentrer.* If a man ſeiſed of Lands in Fee die, his wife privement enſeint with a ſon, and a ſtranger abate and die ſeiſed, and after the ſonne is borne, he ſhall be bound by the Diſcent, becauſe hee at the time of the diſcent had no right to enter, and this is to be gathered upon theſe words of Littleton, ad cauſe dentrer, which at the time of the Diſcent he had not.

20.H.6.28.b.2.E.4. 25,26. 15.E.4.diſcent.30. ¶ *Eſt eins per Diſcent, &c.* Here is implyed any other heire, collaterall or lineall.

(d)Vid.Sect.259.403. A wo infant is accounted in Law (as hath beene often ſaid,) (d)untill he paſſeth the

CItem, ſi un enfant deins age ad tiel cauſe de entry en aſcuns terres ou tenements ſur un auter, que eſt ſeiſie en fee, ou en fee taile de meſme les terres ou tenements, ſi tiel home que eſt tielment ſeiſie, moruſt de tiel eſtate ſeiſie, & les terres diſcendont a ſon iſſue durant le temps que lenfant eſt deins age, tiel diſcent, n̄ tollera

ALſo if an Infant within age hath ſuch cauſe to enter into any Lands or Tenements upon another, which is ſeiſed in fee, or in fee tayle of the ſame Lands or Tenements, if ſuch man who is ſo ſeiſed, dieth of ſuch eſtate ſeiſed, and the Lands deſcend to his Iſſue, during the time that the Infant is within age, ſuch Diſcent ſhall not take away the entry of the lentrie

lentry lenfant mes q̄ il poit enter ſur le iſſue que eſt eins per diſcent, &c. pur ceo que nul laches ſerra adjudge en un enfāt deins age en tiel caſe.

Infant, but that hee may enter upon the iſſue which is in by diſcent, for that no laches ſhall bee adjudged in an Infant within age in ſuch a caſe.

age of 21. yeares, and certaine priviledges hee hath in reſpect of his infancy.

¶ *Nul Laches ſerra adjudge en le infant deins age en tiel caſe.*

And Littleton well added (en tiel caſe) that is, in caſe of Diſcent, for in ſome other Caſes, Laches ſhall prejudice 33.E.3.quar.imp.46.

an Infant. As Laches ſhall be adjudged in an Infant, if he preſent not to a Church within ſix moneths, for the Law reſpecteth more the priviledge of the Church, (that the Cure be ſerved,) than the priviledge of Infancy. And ſo the publike Repoſe of the Realme, concerning mens Freeholds & Inheritances ſhall be preferred before the priviledge of Infancy, in caſe of a fine, where the time begins in the time of the Anceſtor. So non-claime of a Villeine, of an Infant by a yeare and a day, who hath fled into ancient Demeſne, ſhall take away the eſtate of the Infant. And if an Infant bring not an Appeale of the death of his Anceſtor within a yeare and a day, he is barred of his appeale for ever, for the Law reſpects more Liberty and Life, than the Priviledge of Infancy. And here it is to be obſerved, that Littleton putteth his caſe, that an Infant ſhall enter upon a Diſcent, when a ſtranger dieth ſeiſed, but he put it not ſo before, in the caſe of the Baſtard eigne. B. Tenant in taile infeoffeth A. in fee, A. hath iſſue within age, and dieth, B. abateth and dieth ſeiſed, the iſſue of A. being ſtill within age, this Diſcent ſhall binde (e) the Infant, for the iſſue in taile is remitted: and the Law doth more reſpect an ancient right in this caſe, than the priviledge of an infant that had but a defeaſible eſtate. And it is ſaid (f) if the King die ſeiſed of Lands, and the Land deſcend to his ſucceſſor, that this ſhall bind an Infant, for that the priviledge of an Infant in this caſe holds not againſt the King. Pl.Com.372. (e)11.E.4.1.2. F.N.B.35.m. (f)35.H.6.60.

Sect.403.

¶ Item, ſi le baron & ſa feme come en droit la feme ont title & droit denter en tenements que un autre ad en fee, ou en fee taile, et tiel Tenant morust ſeiſie, &c. en tiel caſe lentre le baron eſt tolle ſur lheire que eſt eins per diſcent. Mes ſi le baron devie, donque la feme bien poit enter ſur liſſue que eſt eins per diſcent, pur ceo que Laches le baron ne turnera la feme ne ſes heires en prejudice ne en dammage

¶ Alſo if Husband and Wife, as in right of the wife have title and right to enter into lands which another hath in fee, or in fee tayle, and ſuch tenant dieth ſeiſed, &c. In ſuch caſe the entry of the Husband is taken away upon the heire which is in by Diſcent: but if the Husband die, then the wife may well enter upon the Iſſue which is in by Diſcent, for that no Laches of the husband ſhal turn the wife or her heires to any prejudice, nor loſs

¶ *Si baron & feme come en droit ſa feme ont title & droit dener, &c. & tiel tenant moruſt ſeiſie, &c.*

Theſe words are generall, but are particularly to bee underſtood, viz. when the wrong was done to the wife during the Coverture, for if a Feme ſole be ſeiſed of Lands in fee, and is diſſeiſed, and then taketh husband; In this caſe the husband and wife, as in the right of the wife, have right to enter, and yet the dying ſeiſed of the diſſeiſor in that caſe ſhall take away the entry of the wife after the death of her husband, and the reaſon is aſwell for that ſhee herſelfe when ſhee was ſole, might have entred and recontinued the poſſeſſion, as alſo it ſhall be accounted her folly that ſhee would take ſuch a husband which would not enter before the Diſcent. 9.H.7.24.2.2.E.4.25. 7.E. 47.b.20.H.6.28.b. 42.E.3.12. 15.E.4.diſcent.30.

But

9.H.7.24.

But there if the woman were within age at the time of her taking of husband, then the dying seised shall not after the decease of her husband take away her Entry; because no folly can bee accounted in her, for that shee was within age when she tooke husband, and after Coverture she cannot enter without her husband, all which is implyed in the said (&c.)

en tiel cas, mes que la fem & ses heirs bñ poient enter, lou tiel discent est eschue durant le coverture.

in such case, but that the wife and her heirs may well enter where such Discent is eschued during the Coverture.

Vid.Sect.402.

¶ *Laches le Baron ne turnera la fem, &c. al prejudice, &c.* Laches signifieth in the Common Law, retchelesnesse, or negligence. Et negligentia semper habet infortunium comitem. Here is a diversity to be observed, that albeit regularly no Laches shall be accounted in Infants, or Feme Coverts as is aforesaid, for not Entry or Claime to avoyd Discents, yet Laches shall be accounted in them for no performance of a Condition annexed to the state of the Land. For if a Feme be infeoffed either before or after marriage, reserving a Rent, and for default of payment a re-entry, In that case, the Laches of the Baron shall disherit the wife for ever. And so it is (n) of an infant; his Laches, for not performing of a Condition annexed to a state, either made to his Ancestor or to himselfe, shall barre him of the right of the Land for ever.

20.H.6.28.b.
(n)31.Ass.p.17.
42.E.3. 1.Pl.Com.55.
10.H.7. 13.H.7.
35.H.6.41.Pl.Com.136.b.
Fleta lib.2.cap.50.

If a man make a feoffment in fee to another reserving a Rent, and if he pay not the Rent within a moneth, that he shall double the Rent, and the Feoffee dieth, his heire within age, the Infant payeth not the Rent, he shall not by this Laches forfeit any thing. But otherwise it is of a Feme Covert, and the reason and cause of this diversity is, for that the Infant is provided for, by the Statute, (o) Non current usuræ contra aliquem infra ætatem existen', &c. But that Statute doth not extend to a Feme Covert, neither doth that Statute extend to a condition of a re-entry, which an Infant ought to performe, for the forfeiture ther of cannot be called Usura.

(o)Lestat.de Mert.cap.5. *misv: 5f: 37° H8: 9: in margine*

Sect. 404.

¶* Mes la Court tient, lou tiel title est done al feme sole, que puis prent Baron, que nentra pas, eins suffer un Discent, &c. la auter est, car lerra dit la folly le feme de prender tiel baron que nentre en temps, &c.

But the Court holdeth where such title is given to a fem sole who after taketh husband which doth not enter, but suffer a Discent, &c. there otherwise it is, for it shall bee said the folly of the wife to take such a husband which entered not in time, &c.

9.H.7.24.

¶ This is added, and therefore as formerly I have done, I meddle not withall, howbeit the opinion is holden for Law, as it appeareth in the Section next precedent.

Sect. 405.

¶ Here Little. explaineth a man of no sound memory to bee Non compos mentis. Many times (as here it appeareth) the Latin word explaineth the true sense, and calleth him not Amens, demens, furiosus, lunaticus, fatuus, stultus, or the like, for Non compos mentis is most sure and legall.

Pl.Com.fo.368.b per Sanders lib.4.fo.127. 282.Beverleyes case. Mir.cap.1.Se.3.cap.5. Sect.1.Bracton fo. 165 & 420. Brit.fol.169.b.217.66. Fleta li.6.c.39.Fitz.N.B. 222.b.Stanf.Prer.33.34.

¶ Item, si hom̃ que est̃ non sañ memorie, que est a dire en Latin, Qui non est cõpos mentis, ad cause dentre ẽ alcuns tiels tenements, si tiel discent ut supra, soit ewe en la vie, durant le temps que il fuit de

Also if a man which is of non saae memory, that is to say in Latine, *Qui non est compos mentis*, hath cause to enter into any such tenements, if such discent, *Ut supra*, bee had in his life during the time that hee was not of sound non

non ſane memorie, & puis devia, ſon heire bien poit enter ſur luy que eſt eins p diſcent. Et en ceſt caſe poyes veyer un cas, q̃ lheire poiet enter, et uncore ion anceſter que avoit meſme le title ne puiſſoit enter. Car celuy que fuit hors de ſa memorie al temps de tiel diſcent, ſil voile enter apres tiel diſcent, ſi action ſur ceo ſoit ſue envers luy, il nad riens pur luy a pleder, ou de luy ayder, mes adire que il fuit de non ſane memorie al temps de tiel diſcent, &c. et a ceo ne ſerra il reſceive a dire, pur ceo que nul home d̃ pleine age ſerra reſceive en aſcun plee per la ley a diſabler le perſon demeſn̄, mes lheire bien poit diſabler le perſon ſon auncеſter pur ſon advantage demeſne en tiel cas, pur ceo q̃ nul laches poit eſtre adjudge per la ley en celuy que ad nul diſcretion en tiel caſe.

memory, & after dieth, his Heire may well enter upon him which is in by Diſcent. And in this caſe you may ſee a caſe where the Heire may enter, and yet his anceſtor which had the ſame title could not enter. For he which was out of his memory at the time of ſuch diſcent, if he will enter after ſuch a diſcent, if an action upon this be ſued againſt him, he hath nothing to plead for himſelfe or to help him, but to ſay, that hee was not of ſane memory at the time of ſuch diſcent, &c. And he ſhall not be received to ſay this, for that no man of full age ſhall be received in any plea by the Law to diſable his owne perſon, but the Heire may well diſable the perſon of his Anceſtor for his own advantage in ſuch caſe, for that no Laches may bee adjudged by the Law in him which hath no diſcretion in ſuch caſe.

of foure ſorts; 1. Idiota, which from his nativity, by a perpetuall infirmity, is Non compos mentis. 2. Hee that by ſickneſſe, griefe, or other accident, wholly loſeth his memorie and underſtanding. 3. A Lunatique that hath ſometime his underſtanding and ſometime not, Aliquando gaudet lucidis intervallis, and therefore hee is called Non compos mentis, ſo long as he hath not underſtanding. Laſtly, hee that by his owne vicious act for a time depriveth himſelfe of his memory and underſtanding, as he that is drunken. But that kinde of Non compos mentis ſhall give no priviledge or benefit to him or to his heires. And a Diſcent ſhall not take away the entry of an Ideot, albeit the want of underſtanding was perpetuall; for Littleton ſpeaketh generally of a man of non ſane memory. So likewiſe if a man that becomes Non compos mentis by accident, as is aforeſaid, be diſſeiſed & ſuffer a Diſcent, albeit he recover his memory & underſtanding again, yet hee ſhall never avoid this Diſcent; & ſo it is à fortiori of one that hath Lucida intervalla. As for a Drunkard, who is Voluntarius Dæmon, he hath (as hath been ſaid) no priviledge thereby, but whatſoever hurt or ill ſoever he doth, his drunkenneſſe doth aggravate it; Omne crimen ebrietas & incendit, & detegit.

Lib.4.124.125. Beverleyes caſe.

If an Ideot make a feoffment in fee, he ſhall in pleading never avoid it, by ſaying that hee was an Ideot at the time of his feoffment, and ſo had been from his nativity. But upon an office found for the King, the King ſhall avoid the feoffment, for the benefit of the Ideot, whoſe cuſtody the Law giveth to the King. 39.H.6.42.b.Abb. Aſſ.8.b. F.N.B.202. 5.E.3.70. Britton, cap.28.fol.66. 25.Aſſ.pl.4.35.Aſſ.pl.10. inf. ſ. 406

So it is of a Non compos mentis by accident, and of him Qui gaudet lucidis intervallis, If an eſtate be made during his Lunacy: for albeit the parties themſelves cannot bee received to diſable themſelves, yet twelve men upon their oathes may finde the truth of the matter. But if any of them alien by fine or recovery, this ſhall not onely binde himſelfe, but his Heires alſo. As amongſt other things requiſite to be knowne, theſe Caſes you ſhall finde at large in my Commentaries, whereunto for brevity I referre the Reader: Upon all which bookes there have been foure ſeverall opinions, concerning the alienation, or other act of a

32.E.1.tit. Scire fac.160. Stanf.Pr.34.F.N.B. 202.a. Beverleyes caſe lib.4. 126.127.128.

† Tho' y office do ſome intitle by relation to y time of y birth of y Ideot viz: to avoid all meſne acts done by Ideot: yet for y more profit it ſhall have relation only from y time of y office found. Rep. 8 fol. 170. Fowſon's caſe.

Vide Br. tit. Dum fuit infra ætatem. 5.

man that is Non compos mentis, &c. For firſt ſome are of opinion, that hee may avoide his owne act, by entry, or plea. Secondly, Others are of opinion, That he may avoide it by writ, and not by plea. Thirdly, Others, That hee may avoid it either by plea, or by Writ; and of this opinion is Fitzherbert in his Natura Brevium ubi ſupra. And Littleton here is of opinion, That neither by Plea, nor by writ, nor otherwiſe, he himſelfe ſhall avoid it, but his Heire (in reſpect his Anceſtor was Non compos mentis) ſhall avoid it by Entry, Plea, or writ. And herewith the greateſt authorities of our Bookes agree; and ſo was it reſolved with Littleton, in Beverleyes caſe; (r) where it is ſaid, That it is a Maxime of the Common Law, That the party ſhall not diſable himſelfe. But this holdeth only in Civill cauſes, for in Criminall cauſes, as Felony, &c. the act and wrong of a mad man ſhall not be imputed to him, for that in thoſe cauſes, Actus non facit reum, niſi mens ſit rea, and he is Amens (id eſt) ſine mente, without his minde or diſcretion; and Furioſus ſolo furore punitur, a mad man is only puniſhed by his madneſſe. And ſo it is of an Infant, untill he be of the age of fourteene, which in Law is accounted the age of diſcretion.

(r) Lib.4.fol.126.127.

Max:

26.Aſſ.27. 21.H.7.31. Stanford 16.b. 8.E.2. Coron.412.414. 351. 22.E.3.ibid.124. Beverleyes caſe ubi ſupra. F.N.B.202.D. 3.H.7.2. Vide 3.E.3.tit.Entrie Cong.Statham. 12.E.4.8. 39.H.6.4. Abbr.Act.89. 39.H.6.43.

¶ *Et en ceſt caſe poyes veir un caſe, &c.* And though Littleton ſaith, (One caſe) yet other caſes may be found to the ſame end. For if there be Grandfather, Father, and Son, and the Father diſſeiſe the Grandfather, and make a Feoffment in Fee, without warranty, the Grandfather dieth, albeit the right deſcend to the Father, he cannot by this right deſcended, enter againſt his own Feoffment, but if he dye, the Son ſhall enter, & avoid the eſtate of the Feoffee.

15.E.4.tit.Diſcent.30.

So if the Grandfather be Tenant in Taile, and the Father diſſeiſe him ut ſupra, mutatis mutandis.

If Lands be given to two, & to the heires of one of them, he that hath the Fee ſimple ſhall not have an action of waſte upon the Statute of Glouceſter, againſt the Joyntenant for life, but his Heire ſhall maintaine an Action of waſte againſt him, upon the Statute of Glouceſter, ſo the Heire ſhall maintaine that Action, which the Anceſtor could not.

Sect.406.

ET ſi tiel home ď non ſane memorie fait Feoffment, &c. il meſm̃ ne poit enter ne aver briefe apelle Dum non fuit compos mentis, &c. cauſa qua ſupra: Mes apres la mort ſon hẽ bien poit enter, ou aver le dit Briefe Dum non fuit compos mentis a ſon election. Meſme la Ley eſt lou enfant deins age fait Feoffement, et devie, ſon heire poit enter, ou aver un Briefe de Dum fuit infra ætatem, &c.

AND if ſuch a man of Non ſane memory make a Feoffment, &c. he himſelfe cannot enter nor have a Writ called *Dum non fuit compos mentis, &c. cauſa qua ſupra:* but after his death his Heire may well enter, or have the ſaid Writ of *Dum non fuit compos mentis* at his choice. The ſame law is where an Infant within age maketh a Feoffment & dyeth, his heire may enter or have a Writ of *Dum fuit infra ætatem, &c.*

¶ *Fait feoffment, &c.* Or any other like conveyance in paiis, but Fines and other aſſurances of Record are not implyed in this (et.) ✓

for by fine & recovery one non comp. &c. may bind his heirs. v. ſup. a3

¶ *Meſme la ley dun Enfant.* This is true, as to the bringing of a Dum fuit infra ætatem, &c. but without queſtion the Infant in that caſe might have entred, as it appeareth in the next Section.

¶ *Briefe* Dum non fuit compos mentis. This writ (as it appeareth by our Author) lyeth for the heire of him that was Non compos mentis, and not for himſelfe, but a Dum fuit infra ætatem lieth as well for the Anceſtor himſelf after his full age, as for his Heire.

Sect.

Sect. 407.

¶ Item, ſi jeo ſue diſſeiſie per un enfant deins age, le quel aliena a un auter ẽ fee, & lalienee devie ſeiſie, & les Tẽts diſcendõt a ſon heire, eſteant lenfant deins age, mon entry eſt tolle, &c.

ALſo if I be diſſeiſed by an Infant within age, who alieneth to another in Fee, and the Alienee dieth ſeiſed, and the lands diſcend to his heire being an Infant within age, my entry is taken away, &c.

Section 408.

¶ Mes ſi lenfant deins age ent ſur lhẽ que eſt eins p diſcent, come il bien poit pur ceo q̃ meſme le diſcent fuit durant ſon nonage, donque jeo bien puiſſe enter ſur le diſſeiſor, pur ceo que p ſon entrie il ad defeat & anient le diſcent.

BUt if the infant within age enter upon the Heire which is in by Diſcent, as he wel may, for that the ſame Diſcent was during his Nonage, then I may well enter upon the Diſſeiſor, becauſe by his entry hee hath defeated and taken away the Diſcent.

¶ HEre it appeareth, that the entry of the Infant is lawfull, and giveth advantage to the Diſſeiſee to enter alſo, becauſe the Diſcent, which was the impediment, is avoyded. And it is to be obſerved, That if the Diſcent bee caſt, the Infant being within age, he may enter at any time, either within age, or after his full age. Vid. the next Sect. following. 43. E. 3. tit. Entr. Cong. Ver. N. B 126. b. F. N. B. 192.

And ſo it is if an Infant make a Feoffment, &c. hee may enter either within age, or at any time after his full age, and ſo in both caſes may his heire. 45. E. 3. 21.

Sect. 409.

¶ EN meſme le manner eſt lou jeo ſue diſſeiſie, & le diſſeiſor fait Feoffment en fee ſur condic̃, & le Feoffee mor de tiel eſtate ſeiſie, jeo ne purroy my enter ſur lhẽ le feoffee: mes ſi le Condition ſoit enfreint, iſſint q̃ pur cel cauſe le Feoffor enter ſur lheire, ore jeo bñ puiſſe enter, pur ceo que quãt le Feoffor ou ſes heires entront pur le condition enfreint, le diſcent eſt ouſterm̃ defeat, &c.

IN the ſame manner it is where I am diſſeiſed, and the Diſſeiſor make a Feoffment in fee upon condition, and the Feoffee die of ſuch eſtate ſeiſed, I may not enter upon the heire of the Feoffee: but if the Condition bee broken, ſo as for this cauſe the feoffor enter upon the Heire, now I may well enter, for that when the Feoffor or his Heires enter for the condition broken, the Diſcent is utterly defeated, &c.

¶ THe reaſon hereof is apparent, for Ceſſante Cauſa, ceſſat Cauſatum. Tenant in Capite maketh a feoffment in Fee to the uſe of the Feoffee and his Heires, untill the Feoffor pay an hundred pounds to him or his Heires, the Feoffee dyeth his heire within age, now hath the King the Wardſhip of the body, and is intituled to the gard of the Land. But if the Feoffor pay the hundred pounds according to the limitation, the Wardſhip is deveſted, both for the body and the Land, and ſo it is in caſe of a Condition: for as Littleton here ſaith, the Diſcent which is the cauſe of Wardſhip, is utterly defeated. And by theſe two laſt caſes which Littleton hath here put, it appeareth, That there is no difference, where the Diſcent is diſaffirmed by a right Paramount, as where the ſtate was never Vid. the Sect. next precedent. Dyer. 13. El. fol. 298, 299.

lawfull, (as in the case of an Infant,) and where the discent is affirmed for a time, the estate being lawfull, and being after defeated by matter ex post facto, by a title of Re-entry.

Section 410.

¶ *Entre en Religion, &c.* Here is implyed Profession. This discent shall not barre the entry of the Disseisee, for that the discent commeth by the Deed of the Father, because he entred into Religion, wherein there is an excellent poynt worthy of observation: For albeit the entry into Religion make not the discent, but the profession, whereof you have read before, Sect. 200. yet here you may learne by Littleton, That the Law respects the originall Act, and that is, his entry into Religion, which is his owne Act, whereupon the profession followed; whereby the discent hapned; for, Cujusque rei potissima pars, principium est. And againe, Origo rei inspici debet, whereof you shall make great use in reading of our Books. * Here Littleton attributeth the cause of the discent to his entry into Religion, which was his owne Act, whereas a discent doth not take away an entry unlesse it commeth by death, which, as Littleton saith, is the Act of God, and no glorious pretext of an Act, (no though it be of Religion) shall worke a wrong to a stranger, that hath right, to barre him of his entry: But it is sayd, That in the case of the Bastard eigne, and mulier puisne, such a discent shall bind the Mulier, as before hath beene said, and such an heire that commeth in by such a discent, shall have his age.

Vid. Sect. 200.

* V. Pl. Com. Dame Hales case. 6.E.3.41. &c.

10.E.3.55.

244. a.

¶ *Car si jeo arraigne un Assise, &c.* Nota, if a man bee Tenant or Defendant in a reall or personall Action, and hanging the suit, the Tenant or Defendant entreth into Religion, by this the Writ is not abated, because it is by his owne Act. And so it is of a Resignation, but otherwise it is of a Deposition, or deprivation, because hee is expelled by judgement, and yet his offence, &c. was the cause thereof, sed in præsumptione Legis, judicium redditur in invitum

3.H.6.41. 10.H.6.10 b. 18.E.4.19. 9.E.4.25.52. 7.E.4.15. 18.E.3.24.25. E.3.39. 46.E.3.25. 30.E. 1.Brief.885. Bracton lib. 4.fo.189. & lib.5.fo.414. 22.E.2.Briefe 930.15.Ass. pl.8.

¶ *Moy de mon entry, &c.* Here is implyed, Or any of my heires.

ITem, si jeo soy disseisie, & le Disseisor ad issue & enter en Religion, per force de quelles Tenements discendōt a son issue, en cest case jeo bien puisse enter p̄ issue, & uncore la fuit un discent. Mes pur ceo que tiel discēt bient al issue per fait le pier, s̄, pur ceo que il enter en Religion, &c. & le discent ne biēt a luy per fait de Dieu, s̄, per mort, &c. mon entre est congeable. Car si jeo arraigne un Assise d̄ Novel Disseisin envers mon Disseisor, coment que il puit enter en religion, ceo ne abata my mon brē mes mō brē (c̄ non obstant) estoyera en sa force, & mon recobere vers luy serr̄ bon̄. Et per mesme le reason le discent que aveigne a son Issue per son fait demesn̄, ne tollera moy d̄ mō entry, &c.

ALso if I bee disseised, & the Disseisor hath Issue and entreth into Religion, by force whereof the lands descend to his issue, In this case I may well enter upon the Issue, and yet there was a discent: but for that such discent commeth to the issue by the Act of the father, s. for that he entred into Religion, &c. and the Discent came not unto him by the Act of God, (*scilicet*) by death, &c. my entry is congeable: for if I arraigne an Assise of *Novel disseisin* against my disseisor, albeit he after enter into Religion, this shall not abate my writ, but my writ (notwithstanding this) shall stand in his force, and my recovery against him shall bee good. And by the same reason the discent which commeth to his Issue by his own Act, shal not take from me my entry, &c.

Sect. 411.

¶ Item, ſi jeo leſſe a un home certain terres pur terme de 20. ans, & un auter moy diſeiſiſt, & ouſta le termor & debie ſeiſie, & les tenements diſcēdont a ſon heire, jeo ne purroy enter, & uncore le leſſee pur terme dans bien puit enter pur ceo que il p̄ ſon entry ne ouſta lheire q̄ eſt eins p̄ diſcēt d̄ le franktenemēt q̄ eſt a luy diſcēdus meſſolement claime daver les tenemēts pur terme dans, le quel neſt pas expulſement de le franktenement del heire que eſt eins per diſcent. Mes autrement eſt ou mon tenant a terme de vie eſt diſſeiſie, Cauſa patet, &c.

ALſo if I let unto a man certain lands for the terme of twenty yeares, and another diſſeiſeth me, and ouſt the termor, and dye ſeiſed, and the Lands deſcend to his heire: I may not enter, and yet the Leſſee for yeares may wel enter, becauſe that by his entry he doth not ouſte the heire who is in by Diſcent of the Freehold which is deſcended unto him, but only claymeth to have the Lands for terme of yeares, which is no expulſion from the freehold of the heire who is in by Diſcent. But otherwiſe it is where my Tenant for terme of life is diſſeiſed, *Cauſa patet, &c.*

¶ *Pur terme de 20. ans.* It is cleere that a Diſcent ſhall not take away the entry of a Leſſee for yeares, as our Author here ſaith, nor of a Tenant by Elegit, or Tenant by Statute Merchant, or ſuch like, as habe but a Chattle and no Freehold, and the reaſon is, for that by their entry upon the heire by diſcent, they take no Frehold (which as often hath bin obſerved is ſo much reſpected in Law) from him, but otherwiſe it is of an eſtate for life, or any higher eſtate. And as a Diſcent of a Freehold & Inheritance, ſhall take away the entry of him that right hath to a Freehold, or Inheritance, ſo a Diſcent of a Freehold and Inheritance, cannot take away the entry of him that hath but a Chattle, for that no Diſcent or dying ſeiſed can be of the ſame.

A man ſeiſed of an advowſon in fee, grants three avoydances one after another, and after the Church becommeth voyd, and the Grantor preſents, and his Clarke is admitted and inſtituted, and after the Church becomes void againe, the Grantee may preſent to the ſecond avoydance, for that he was not put out of the poſſeſſion thereof, for as the Leſſor having the Freehold and Inheritance cannot diſſeiſe his Leſſee for yeares, having but a Chattle, that any diſcent may be caſt, to take away his entry (as Littleton here ſaith:) ſo in the ſaid caſe, the Grantor hath the Franktenement and Fee of the Advowſon rightfully, ſo as he cannot make any uſurpation, to gaine any eſtate, or to put the Grantee ſo out of poſſeſſion as that he ſhould not preſent, no more than the Leſſee for yeares in this caſe, to enter. Alſo in reſpect of the privity that is betweene them, the uſurpation of the Grantor ſhall not put the Grantee out of poſſeſſion for the two later avoydances. And this was reſolved (a) by all the Judges of the Court of Common Pleas, which I my ſelfe heard and obſerved.

(a) Hill. 18. Eliz. in Communi Banco.

Sect. 412.

¶ Item, il eſt dit que ſi home eſt ſeiſie de tenements en fee per occupation en temps de guerre, & ent morust ſeiſie en

ALſo it is ſaid that if a man be ſeiſed of lands in fee by occupation in time of warre, and thereof dyeth ſeiſed in the

¶ *Per occupation en temps de guerre.* Firſt it is neceſſary to bee knowne, what ſhall bee ſaid Time of peace, Tempus pacis: and what ſhall be ſaid, Tempus belli, ſive guerræ, time of warre. Tempus pacis eſt quando

Inter brevia de anno 1. E.3. parte 1. & pasch. 28. E.3. inter adjudicata coram Rege lib. 2. fol. 37. in thesaur.

Pasch. 39. E. 3. inter adjudicata coram Rege in thesaur. lib. 2. fol. 92.

14. E. 3. tit. scire facias 122. but more fully in the Record at large.

do Cancellaria & aliæ Curiæ Regis sunt apertæ, quibus lex fiebat cuicunque prout fieri consuevit. And so it was adjudged in the case of Roger Mortimer, and of Thomas Earle of Lancaster. Utrum terra sit guerrina necne, naturaliter debet judicari per recorda Regis, & eorum, qui curias Regis per legem terræ custodiunt, & gubernant, sed non alio modo.

temps de guerre, & les Tenements discendont a son heire, tiel discent ne oustera ascun home de son entry, & de ceo home poit vier en un plee sur un briefe de Aiel, An. 7. E. 2.

time of warre, and the tenements descend to his heire, such discent shall not oust any man of his entry, and of this a man may see in a Plea upon a Writ of Aiel, 7. E. 2.

And therefore when the Courts of Justice be open, and the the Judges & Ministers of the same may by Law protect men from wrong and violence, and destribute Justice to all, it is said to be time of peace. So, when by invasion, Insurrection, Rebellions, or such like, the peaceable course of Justice is disturbed & stopped, so as the Courts of Justice bee as it were shut up, Et silent leges inter arma, then it is said to be time of warre. And the tryall hereof is by the Records, and Judges of the Court of Justice, for by them it will appeare, whether Justice had her equall course of proceeding at that time or no, and this shall not be tryed by Jury.

If a man be disseised in time of peace, and the discent is cast in time of warre, this shall not take away the entry of the Disseisee.

Bracton lib. 4. fol. 240.

Item tempore pacis, quod dicitur ad differentiam eorum quæ fuerunt tempore belli, quod idemest, quod tempore guerrino, quod nihil differt à tempore juris, & injuriæ, est enim tempus injuriæ, cum fuerunt oppressiones violentæ, quibus resisti non potest, & disseisinæ injustæ.

So as hereby it also appeareth, that time of peace is the time of law and right, and time of warre is the time of violent oppression, which cannot be resisted by the equall course of Law. And therefore in all reall actions, the expleas, or taking of the profits are layd Tempore pacis, for if they were taken Tempore belli, they are not acounted of in Law.

Ingham cap. de novel disseisin.

¶ *Per Occupation.* Occupation is a word of Art, and signifieth a putting out of a mans Freehold in time of warre, and it is all one with a disseisin in time of peace, saving that it is not so dangerous, as it appeareth here by Littleton, and therefore the Law gave a writ in that case of Occupavit, so called, by reason of that word in the writ, in stead of disseisivit, in the Assise of Novel disseisin, if the disseisin had beene done in time of peace, whereby it appeareth, how aptly both in this, and in all other places, Littleton thorow his whole Booke speaketh. But albeit Occupatio whereof Littleton here speaketh, is used only in the sayd Writ, and in none other, (that I can finde or remember) yet hath it beene used commonly in Conveyances and Leases, to limit or make certaine precedent words, as, ad tunc in tenura & occupatione. But occupatio is applyed to the possession, be it lawfull or unlawfull; It hath also crept into some Acts of Parliament, as 4 H. 7 cap. 19. 39. Eliz. cap. 1. and others, and occupare, is sometime taken to conquer.

Lib. 4. fo. 49, 50. Ognels case.

¶ *Et de ceo home poit vier en un plea sur briefe de Aiel, Anno. 7. E. 2.* Hereby it appeareth, that ancient termes or yeares, after the example of Littleton, are to bee cited and vouched, for confirmation of the Law, albeit they were never printed, and that of those yeares, those especially of E. 1. H. 3. &c. are worthy of the reading and observation, a great number of which I have seene and observed, which in mine opinion doe give a great light, not onely to the understanding and reason of the Common Law, (which Fitzherbert either saw not, or were by him omitted) but also to the true expositiõ of the ancient Statutes, made in those times, yet mine advice is, that they be read in their time: for after our Student is enabled and armed to set on our yeare Bookes, or reports of the Law, let him reade first the latter reports, for two causes: First, for that for the most part the latter Judgements & Resolutions are the surest, and therefore it is best to season him with them in the beginning, both for the setling of his judgement, and for the retaining of them in memory. Secondly, for that the latter are more facile and easier to be understood, than the more ancient: but after the reading of them, then to read these others before mentioned, and all the ancient Authors that have written of our Law; for I would with our Student to be a compleat Lawyer. But now to returne. As it is in case of discent, so it is in case of presentation, for no usurpation in time of warre putteth the right Patron out of possession, albeit the incumbent come in by institution and induction: And time of war doth not only give priviledge to them that be in warre, but to all others within the Kingdome, and although the admission and institution be in time of peace, yet if the presentment were in time of warre, it putteth not the right Patron out of possession.

6. E. 3. 41. 7. E. 3. darr. pres. 1.
18. E. 2. quar. imp. 175.
F. N. B. 31.

Sect.

Sect. 413

CItem, que nul mozant seisie (ou les Tenements viendront a un auter per succession) tollera lentẽ dascun person, &c. Come de Prelates, Abbots, Priors, Deans, ou Parson deseglise, ou dauters corps politike, &c. coment q̃ ils fueront xx. mozants seisie, & xx. successors, ceo ne tolle jammes ascun home de son entry.

CPlus serra dit de Discents en le prochein chapter.

ALso that no dying seised (where the tenements come to another by succession) shall take away the entry of any person, &c. As of Prelates, Abbots, Priors, Deanes, or of the Parson of a Church or of other bodies politike, &c. albeit there were xx. dyings seised, and xx. successors, this shall not put any man from his entry.

More shall be said of Discents in the next chapter.

¶ *PER Succession.* This in the Common Law is applyed only to bodies politike or Corporate, which have succession perpetuall, and not to naturall men; as to a Bishop and his successors, or to an Abbot, Deane, Archdeacon, Prebend, Parson, &c. & their successors, and not to I. S. or any other naturall body and his successors, but to him and his heires. And the Successor of any of these is in the Post, and the heire of the naturall man is in the Per, and Succedere, is derived of Sub & cedere. Vid.Sect.11. 7.E.3.25.2.5.E.3.13. & 31.

¶ *Corps politike, &c.* This is a Body to take in succession, framed (as to that capacity) by policy, and thereupon it is called here by Littleton a body politike, and it is also called a Corporation, or a body incorporate, because the persons are made into a body, and are of capacity to take and grant, &c. And this body politike, or incorporate may commence, and be established three manner of wayes, viz. by prescription, by letters patents, or by act of Parliament. Every body politike or Corporate, is either Ecclesiasticall or Lay: Ecclesiasticall, either regular, as Abbots, Priors, &c. or Secular, as Bishops, Deanes, Archdeacons, Parsons, Vicars, &c. Lay, as Maior and Commonalty, Baylifes and Burgesses, &c. Also every body Politike or Corporate, is either elective, presentative, collative, or donative. And againe it is either sole, or aggregate of many; as you may reade in the third part of my Commentaries. And this body Politike or Corporate, aggregate of many, is by the Civilians called Collegium, or Universitas. 4 maner of ways 8 Rep. 18. fo: 29. viz. by comon law &c. Lib.3.fo.73. in the case of the Deane and Chapter of Norwich.

Chap.7. Continuall Claime. Sect.414.

CContinual claim est la lou home ad droit & title dentrer en ascuns terres ou tenements dont auter est seisie en fee, ou en fee taile, si cesty que ad title dentrer fait con-

CContinuall clayme is where a man hath right & title to enter into any lands or tenements wherof another is seised in fee, or in fee tail, if he wch hath title to enter makes continual claim to the lãds or tene-

CHereout an thor first describeth what a cõtinual claim is. It is called Continuum Clameũ, because at the common Law it must have been made within every yeare and day, as Littleton here teacheth. And yet if hee that right hath, maketh clayme, and the Ter-tenant dyeth within the yeare and the day, this clayme though it bee but once Mirror cap.1. Sect.15. & Sect.18. Bract.li.5.fo.435,436. Britton 107.b.126.a. Fleta lib.6 cap.52.53. Vid.Sect.424. f. 423 Vid.Sect.385.32.H.8. f.33.

(*)Vid.Sect.424.

once* made (as hath beene ſaid) ſhall preſerve the entry of him that maketh the clayme.

¶ *Ad droit & title denter.* And yet in ſome caſes, a continuall clayme may be made by him that hath right and cannot enter.

If Tenant for years, Tenant by Statute Staple, Merchant or Elegit, bee ouſted, and hee in the reverſion diſſeiſed, the Leſſor, or hee in reverſion, may enter to the intent to make his clayme, and yet his entry as to take any profits, is not lawfull during the terme. And in the ſame manner, the Leſſor or he in the reverſion in that caſe,

Dyer 19.Pl.Com.374. 15.H.7.3.4.Jacobins caſe. 28.H.6.28.

may enter to avoyde a collaterall warranty, or the Leſſor in that caſe may recover

Vid.Sect.442. 45.E.3.21.

in an Aſſiſe: And ſo (as ſome have holden) may the Leſſor enter in caſe of a leaſe for life, to this intent, to avoid a Diſcent or a warranty.

7.H.6.40.Contin. Claime 1. Downclers caſe.5.E.4.4.

If the Diſſeiſee make continuall clayme, and the Diſſeiſor die ſeiſed within the yeare, his heire within age, and by office the King is intitled to the wardſhip, albeit the entry of the Diſſeiſee bee not lawfull, yet may he make continuall clayme to avoyd a diſcent, and ſo in the like.

¶ *Uncore poit celuy que fait tiel clayme ou ſon heire enter.* This is to be underſtood in this manner, that if the father make claime, and the diſſeiſor dieth, and then the Father dyeth, that his heire may enter, becauſe the diſcent was caſt in the Fathers time, and the right of entry which the Father gained by his claime, ſhall deſcend to his heire. But if the Father make continuall claime, and dieth, and the Son make no continuall claime, and within the year and day after the claime made by the Father, the Diſſeiſor dyeth, this ſhall take away the entry of the Sonne, for that the diſcent was caſt in his time, and the claime made by the father ſhall not availe him, that might have claimed himſelfe. And of this opinion was Littleton himſelfe in our bookes, where hee holdeth, that no continuall claime can avoyde a diſcent, unleſſe it bee made by him that hath title to enter, and in whoſe life the dying ſeiſed was. See more of this matter hereafter, in this chapter, Sect. 416.

Bracton lib.5.fo.436. Fleta lib.5.cap.52.53. 22.H.6.37. 9.H.4.5.a. 15.E.4.22.a.

And as here Littleton putteth his caſe of the Anceſtor and heir, ſo it holdeth in all reſpects of the Predeceſſor and Succeſſor.

22.H.6.37.

tinuall claime a les terres ou tenements devant le mourant ſeiſie de celuy que tient les tenements, donqꝫ coment q̄ tiel tenant mourust ent ſeiſi, & les terres ou tenements diſcendront a ſon heire, uncore poit celuy que avoit fait tiel claime ou ſon heire, enter ē les terres, ou tenements iſſint diſcendus, per cauſe de l' continual claim̄ fait, nient contriſtiant le diſcent. Sicome en caſe q̄ home ſoit diſſeiſie, & le diſſeiſee fait continual claime a les tenements en la vie le diſſeiſor, comēt que le diſſeiſor devie ſeiſie en fee, & la terre diſcendiſt a ſon heire, uncore poit le Diſſeiſee enter ſur la poſſeſſion le heire, nient obſtant le diſcent.

mēts before the dying ſeiſed of him which holdeth the tenements, then albeit that ſuch tenant dies thereof ſeaſed, & the lands or tenements deſcend to his heire, yet may hee who hath made ſuch continual claime or his heire enter into the lands or tenements ſo deſcended by reaſon of the continuall claim made, notwithſtanding the diſcent. As in caſe that a man bee diſſeiſed, and the diſſeiſee makes continuall claime to the tenements in the life of the diſſeiſor, although that the diſſeiſor dieth ſeiſed in fee and the land deſcend to his heire, yet may the diſſeiſee enter upon the poſſeſſion of the heire notwithſtanding the diſcent.

Sect. 415.

¶ EN meſme l'maner eſt, ſi tenant a terme de vie alien en fee, celuy en le reverſion, ou celuy en le remainder poit enter ſur lalienee: & ſi tiel alienee devie ſeiſi de tiel eſtate ſans continual claime fait a les tenements devant le mozant ſeiſi del alienee, & les tenements per cauſe del mozant ſeiſi del alienee, diſcendont a ſon heire, donques ne poit celuy en le reverſion, ne celuy en le remainder enter. Mes ſi celuy en le reverſion ou celuy en le remainder que ad cauſe dentre ſur lalienee fait continual claime a les tenements devant le mozant ſeiſi del alienee, donques tiel hõe poit enter apres la mozt lalienee, auxybien come il puiſſoit en ſa vie.

IN the ſame manner it is, if tenant for life alien in fee, hee in the reverſion or hee in the remainder may enter upon the alienee. And if ſuch alienee dyeth ſeiſed of ſuch eſtate without continuall claime made to the tenements, before the dying ſeiſed of the alienee, and the lands by reaſon of the dying ſeiſed of the alienee deſcend to his heire, then cannot hee in the reverſion nor hee in the remainder enter. But if hee in the reverſion or in the remainder, who hath cauſe to enter upon the alienee, make continuall claime to the land before the dying ſeiſed of the alienee, then ſuch a man may enter after the death of the alienee, as well as he might in his life time.

¶ BY this it appeareth, that a continuall claime may bee made as well where the lands are in the hands of a Feoffee, &c. by title, as in the hands of a Diſſeiſor, Abator or Intrudor, by wrong, as before hath been noted.

Sect. 416.

¶ Item, ſi terr̃ ſoit leſſe a un home pur terme de ſa vie, le remainder a un auter a terme de vie, le remainder a le tierce en fee, ſi le tenant a terme de vie aliena a un auter en fee, & celuy en le remainder pur terme de vie fait continual claime a la terre devant le morant ſeiſie dalienee,

ALſo if land bee let to a man for term of his life, the remainder to another for terme of life, the remainder to the third in fee, if tenant for life alien to another in fee, and he in the remainder for life maketh continuall claime to the Land before the dying ſeiſed of the Alienee, and after the

¶ *A Lien a un auter en fee.* It is to bee obſerved, that a forfeiture may bee made by the alienation of a particular Tenant, two manner of wayes; either In Paiis, or by matter of Record.

In Paiis, of lands and tenements which lye in Livery (whereof Littleton intendeth his caſe) where a greater eſtate paſſeth by Livery, than the particular Tenant may lawfully make, whereby the reverſion or remainder is devеſted, as here in the example that Littleton putteth, when tenant for life alieneth in

Vid. Sect. 581. 609, 610, 611.

in fee, which must bee understood of a Feoffment, Fine, or Recovery by consent.

17.El.Dyer.339. 16.El.Dy.324.

If Tenant for life, and hee in the remainder for life in Littletons case, had joyned in a Feoffment in fee, this had beene a forfeiture of both their estates, because hee in the remainder is particeps injuriæ. And so it is if hee in the remainder for life had entred, & disseised Tenant for life, and made a Feoffment in Fee, this had beene a forfeiture of the right of his remainder.

33.E.3.Devise 21. 15.E.4.9.Vid.Sect. 603,609,610.

A particular estate of any thing that lies in grant, cannot bee forfeited by any grant in fee by Deed. As if Tenant for life or yeares of an Advowson, Rent, Common, or of a reversion or remainder of Land by Deed grant the same in Fee, this is no forfeiture of their estates, for that nothing passes thereby, but that which lawfully may passe, and of that opinion is Littleton in our Books.

35.H.6.62 Tr.32.El.in Informat. de intrusion vers Robinson pur le Manor de Drayton Basset, to resolved by the Court of Exchequer.

But if Tenant for life or yeares of Land, the reversion or remainder being in the King, make a Feoffement in fee, this is a forfeiture, and yet no reversion or remainder is divested out of the King, and the reason is, in respect of the solemnity of the feoffment by livery, tending to the Kings disherison.

By matter of Record, and that by three manner of wayes: First, By alienation. Secondly, By clayming a greater estate than he ought. Thirdly, By affirming the Reversion or Remainder to be in a stranger.

& puis lalienee mourt seisie, & puis apres celuy en le remainder pur term de vie mourust, debaunt ascun entry fait per luy, en cē cas, celuy ē le remainder en Fee, poit enter sur heire le alience, per cause de continual claime fait per luy que avoit le remainder pur term de sa vie, pur ceo que tiel droit que il averoit dentre, alera & remaindera a celuy en le remainder aps luy, entant que celuy en le remainder en fee ne puissoit pas enter ꝑ lalienee en fee durant la vie celuy en le remainder p̄ terme d̄ sa vie, & pur ceo que il ne puissoit adonqs faire cōtinual claim. (Car nul poit faire continual claim mes quant il ad title dentrie, &c.) msv: fo:250:6 al cont.

alienee dieth seised, & after he in the remainder for life die before any entrie made by him, in this case he in the remainder in Fee may enter upon the Heire of the Alienee, by reason of the continuall claime made by him which had the remainder for life, because that such right as hee had of entrie, shall goe and remaine to him in the remainder after him, insomuch as hee in the remainder in Fee, could not enter upon the Alienee in fee during the life of him in the remainder for life, and for that hee could not then make continuall claim. (For none can make continuall claime but when hee hath title to enter, &c.)

First, By alienation, and that of two sorts, viz. By alienation divesting, or not divesting the reversion or remainder. Divesting, as by levying of a fine, or suffering a common recovery of lands, whereby the reversion or remainder is divested: not divesting, as by levying of a fine in fee, of an Advowson, Rent, Common, or any other thing that lyeth in grant: and of this opinion is Littleton in our Bookes, * and so note two diversities: First, between a grant by Fine (which is of Record) and a grant by Deed in Pais, and yet in this they both agree, That the reversion or remainder in neither case is divested. Secondly, Between a matter of Record, as a Fine, &c. and a Deed recorded, as a Deed inrolled, for that worketh no forfeiture, because the Deed is the originall.

* 15.E.4.9.31.E.3.Gr.62. 14.E.3.3.Avow.117.

15.H.2.Iudg.237. 6.E.3.49.9.E.3.4. 18.E.2.Fines.120. 15.E.4.29. 36.H.6.29. 2.H.6.9.4.El.Dr. 9.H.5.14.22.Ass.31. 18.E.3.28. 16.Ass.16.

Secondly, By Claime, and that may be in two sorts, either expresse or implyed. Expresse, as if Tenant for life will in Court of Record claime fee, or if Lessee for yeares be ousted, and hee will bring an Assise, Ut de libero Tenemento. Implyed, as if in a writ of Right brought against him, hee will take upon him to joyne the mise upon the meere right, which none but Tenant in fee simple ought to doe. So if Lessee for yeares doe lose in a Præcipe, and will bring a Writ of Error, for Error in Processe, this is a forfeiture.

Thirdly,

Thirdly, By affirming the reuerſion or remainder to be in a ſtranger, and that either actiuely or paſſiuely. Actiuely, by fiue manner of wayes. As firſt, if Tenant for life pray in aide of a ſtranger, whereby he affirmes the reuerſion to be in him. Secondly, if hee attorne to the grant of a ſtranger; and there note alſo a diuerſity betweene an Attornment of Record to a ſtranger, and an Attornement in paiis, for an Attornement in paiis worketh no forfeiture. Thirdly, If a ſtranger bring a writ of Entry in caſu proviſo, and ſuppoſe the reuerſion to be in him, if the Tenant for life confeſſe the Action, this is a forfeiture. Fourthly, If Tenant for life plead couinouſly, to the diſheriſon of him in the reuerſion, this is a forfeiture. Fifthly, If a ſtranger bring an Action of waſte againſt Leſſee for life, and he plead Nul waſt fait, this is a forfeiture: or the like.

21.E.3.14.2. 5.E.4.2. 24.H.8 Forf.Bi.87.li.2. fol.55.56. Buckers caſe. 27.E.3.77. 17.E.3.7.2. 39.E.3.16. 29.E.3.24. 5.Aſſ.5. 5.E.3.Entr. Cong.42. 14.E.3.Receit 135. 3.E.3.32. 24.E.3.68. 1.H.7.

Paſſiuely, As if Tenant for life accept a fine of a ſtranger, Sur conuſans de droit come ceo, &c. for hereby he affirmes of Record, the reuerſion to be in a ſtranger.

3.Mar.Dy.148.

Littleton here ſpeaketh of the forfeiture of an eſtate, and here it is to be knowne, that the right of a particular eſtate may be forfeited alſo, and that he that hath but a right of a remainder or reuerſion, ſhall take benefit of the forfeiture. As if Tenant for life be diſſeiſed, and he leuie a fine to the Diſſeiſor, hee in the reuerſion or remainder ſhall preſently enter vpon the Diſſeiſor, for the forfeiture. And ſo it is, if the Leſſee after the Diſſeiſin, had leuied a fine to a ſtranger, though to ſome reſpects, Partes finis nihil habuerunt, yet it is a forfeiture of his right.

Lib.2.fol.55. Buckers caſe.

Littleton here ſpeaketh of an alienation in fee abſolutely, but ſo it is, if the Leſſee for life make a Leaſe for any other mans life, or a gift in taile. If A. be Tenant for life, and make a Leaſe to B. for his life, and B. dyeth, and the Leſſee re-entreth, yet the forfeiture remaineth.

13.E.4.4.

v. 202. b.

If Tenant for life make a leaſe for life, or a gift in Taile, or a Feoffment in Fee, vpon condition, & entreth for the condition broken, yet the forfeiture remaineth. Littleton ſpeaketh of an eſtate for life, ſo it is of Tenant in Taile apres poſsibilitie, Tenant by the Courteſie, Tenant in Dower, or of him that hath an eſtate to him and his heires, during the life of I.S. &c. and ſo of Tenant for yeares, Tenant by Statute Merchant, Statute Staple, or Elegit.

39.Aſſ.15. 43.E.3. Entrie Cong.30. 2.H.5.7. 39.E.3.16. 45.E.3.25.

Littleton ſaith, That where the alienation in fee is made to another, which muſt be intended a ſtranger; for if it be made to him in reuerſion or remainder, it amounts to a ſurrender of his Eſtate, as at large hath bin ſpoken in the Chapter of Tenant for life.

By Littleton it appeareth, That Tenant for life in remainder may enter for the forfeiture of the firſt Tenant for life, and that if the Tenant for life in remainder make Continuall Claime, and the Alienee dye ſeiſed, then may he in the remainder for life enter, and if he die before he doe enter, then he in the remainder in fee ſhall enter, becauſe he in the remainder in fee could not make any claime: and therefore the right of entry, which Tenant for life in remainder gained by his entry, ſhall goe to him in the remainder in fee, in reſpect of the priuity of eſtate: and ſo it is of him in the reuerſion in fee in like caſe, for he is alſo priuie in eſtate.

If two Joyntenants be diſſeiſed, & the one of them make Continuall Claime & dieth, the ſurvivor ſhall take benefit of his Continuall Claime, in reſpect of the priuity of their eſtate.

But if Tenant for life make Continuall Claime, this ſhall not give any benefit to him in the remainder, unleſſe the Diſſeiſor dyed in the life of Tenant for life, for the cauſe aboveſaid, Sectione 414.

If Tenant in Taile, the remainder in fee with garranty, have judgement to recover in value, and dyeth before execution without iſſue, he in the remainder ſhall ſue execution, for he hath right thereunto, and is priuie in eſtate.

In the ſame manner, if a Seigniory be granted by fine to one for life, the remainder in fee, the Grantee for life dieth, he in the remainder ſhall haue a Per quæ ſervitia, for he hath right to the remainder, and is priuie in eſtate. Here alſo it appeareth, That none can make Continuall Claime, but he that hath right to enter. *ms v: fo:250: b*

*Sect.*417.

¶ MEs eſt a veier a toy (mon fits) coment & en ql maner tiel Continual Claime ſerra fait, & ceo bien appzender trois choſes ſont a intender. La 1. choſe

BUt it is to be ſeen of thee (my ſon) how & in what manner ſuch Continuall Claim ſhalbe made: & to learne this well, three things are to be underſtood. The firſt

¶ *Si home ad cauſe dentrer en aſcuns terres ou tenements, &c.*

It is not ſufficient to tell one generally what he ſhould doe, but to direct him how, and in what manner he ſhall doe it, as Littleton doth in this place. And here, the generall rules of our Author are to bee underſtood,

stood, that the entry of a man, to recontinue his Inheritance or Freehold, must ensue his Action for recovery of the same. As if three men disseise me severally of three severall Acres of land, being all in one County, and I enter in one Acre, in the name of all the three Acres, this is good for no more, but for that Acre which I entred into, because each Disseisor is a severall Tenant of the Freehold, and as I must have severall Actions against them, for the recovery of the land, so mine entry must be severall.

This hath bin adjudged Mich.14.& 15. Eliz.Rot.1458.in the Earle of Arundels case.

And so it is, if one man disseise mee of three Acres of ground, and letteth the same severally to three persons for their lives, &c. there the entry upon one Lessee in the name of the whole, is good for no more than that Acre, that he hath in his possession. But if the Disseisor had letten severally the said three Acres to three persons for yeares, there the entry upon one of the Lessees, in the name of all the three Acres, shall recontinue and revest all the three acres in the disseisee, for that the Disseisee might

est, si home ad cause dentre en aſcuns terres ou Tenements que ſont en divers Villes deins un m Countie, ſil enter en un parcel de les terres ou Tenements que ſont en un Ville, en noſme de touts ſes terres ou Tenements as queux il ad droit dentr deins touts les Villes de meſme le Countie, per tiel entrie il avera auxy bone poſſeſſion, et ſeiſin de touts terres ou tenements dont il ad title dentrie, ſicome il avoit enter en fait en chescun parcel, & ceo ſemble grand reason.

thing is, If a man hath cause to enter into any lands or tenements in divers Townes in one same County, if he enter into one parcell of the lands or tenements which are in one Towne, in the name of all the Lands or tenements into the which he hath right to enter, within all the Townes of the same County: By such entry he shall have as good a possession and seisin of all the lands and tenements whereof he hath title of entry, as if hee had entred indeed into every parcell; and this seemeth great reason.

have had one Assise against the Disseisor, because he remained Tenant of the Freehold for all the three Acres, and therefore one entry shall serve for the whole.

7.Ass.18. 12.E.4 10. 36.H.6.27.32.Ass.pl.1.

If one disseise me of one Acre at one time, and after disseise me of another Acre in the same County at another time, in this case my entry into one of them in the name of both is good; for that one Assise might be brought against him for both Disseisins.

11.H.7.25.Dier 16.El. 337.

But if I infeoffe one of one Acre of ground upon condition, & at another time I infeoffe the same man of another Acre in the same County upon condition also, and both the conditions are broken, an entry into one Acre in the name of both is not sufficient, for that I have no right to the Land, nor action to recover the same, but a bare title, and therefore severall entries must be made into the same, in respect of the severall Conditions. But an entry in one part of the Land, in the name of all the Land subject to one Condition, is good, although the parcels be severall, and in severall Townes. And so note a diversity between severall rights of entry, and severall titles of entry, by force of a Condition.

¶ *Deins meſme la Countie.* For if the lands lie in severall Counties, there must be severall Actions, and consequently severall Entries, as hath been said.

¶ *En noſme de tout, &c.* If one disseise mee of two severall Acres in one County, and I enter into one of them generally, without saying, In the name of both; this shall revest only that Acre wherein entry is made, as hath been said, and that is proved by our Bookes which say, That if I bring an Assise of two Acres, if I enter into one hanging the Writ, albeit it shall revest that only Acre, yet the Writ shall abate.

5.H.7.7.4.E.4.19. 22.E.4.11.2.

¶ *Dont il ad title dentrie.* Here in a large sense, title of Entry is taken for a right of Entry.

Sect. 418.

¶ Car ſi home voile enfeoffer un auter ſans fait de certaine terres ou tenements, que il ad deins pluſours villes en un Countie, & il voile liverer ſeiſin al feoffee de parcel de tenements deins un ville en noſme de touts les terres ou tenements que il ad en meſme le ville, & en les auters villes, &c. touts les dits tenem̃ts, &c. paſſont per force de le dit livery de ſeiſin a celuy a q̃ tiel feoffement en tiel maner eſt fait, & uncore celuy a que tiel livery de ſeiſin fuit fait, na voit droit en touts les terres ou tenements ẽ touts les villes, mes per cauſe d̃ livery de ſeiſin fait de parcel de les terres ou tenements en un ville: A multo fortiori il ſemble bone reaſon, que quant home ad title denter en les terres ou tenements en divers villes deins un m̃ County devãt alcun entry per luy fait, que per lentry fait p̃ luy en parcel de les terres en un ville en le noſme de touts les terres & tenements as queux il ad title denter deins meſme le County, ceo veſt un ſeiſin de touts en luy & per tiel entry il ad poſſeſſion & ſeiſin en fait ſicome il avoit enter en chaſcun parcel, &c.

For if a man will infeoffe another without deed of certain lands or tenements which hee hath in many townes in one County, and he will deliver ſeiſin to the feoffee of parcell of the tenements within one Towne in the name of all the lands or tenements which he hath in the ſame Towne, and in other Townes, &c. all the ſaid tenements, &c. paſſe by force of the ſaid livery of ſeiſin to him to whom ſuch feoffment in ſuch manner is made, and yet he to whom ſuch livery of ſeiſin was made hath no right in all the lands or tenements in all the townes, but by reaſon of the livery of ſeiſin made of parcell of the lands or tenements in one Towne: *A multo fortiori* it ſeemeth good reaſon that when a man hath title to enter into the Lands or Tenemeats in divers Townes in one ſame County, before entrie by him made, that by the entry made by him into parcell of the lands in one Towne, in the name of all the lands and tenements to which he hath title to enter within the ſame County, this ſhall veſt a ſeiſin of all in him, and by ſuch entry he hath poſſeſſion and ſeiſin in deed, as if he had entred into every parcell.

¶ This is evident, but here is a diverſity betweene a feoffment and an entry, for a man may make a feoffment of lands in another County, and make livery of ſeiſin within the view, albeit he might peaceably enter & make actuall livery, and ſo may he ſhew the Recognitors in an Aſſiſe, the view of lands in another County, but a man cannot make an entry into lands within the view where he may enter without any feare (for it is (*) one thing to inveſt, and another to devеſt) as hereafter ſhall be ſaid in the Section next following. 38.E.3.11. 38.Aſſ.23. (*) Vide Sect. next following.

¶ *A multo fortiori.* Of a minore ad majus, is an argument frequent in our Author, and in our Books, the force of argument in this place ſtandeth thus: if it be ſo in a feoffment paſſing a new right, much more it is for the reſtitution of an ancient right as the worthier & more reſpected in law, which holdeth affirmatively, as our Author here teacheth us. Vid. Sect. 438.

The three (&c.) in this Section need no explication.

Sect. 419.

CLE second chose est a entender, q̄ si hõe ad title denter en ascuns terres ou tenements, sil ne osast enter en mꝰ les terres ou tenements, ne en ascun parcel de c̄ p̄ doubt ð battery, ou pur doubt de mayhem, ou pur doubt de mort, sil alast & approach aury pres la tenements, come il osast pur tiel doubt, & claime per parol les tenements estre les soens, maintenant per tiel claime il ad un possession, & seisin c̄ les tenemēts, auxybien come sil ust enter en fait, coment que il navoit unque possession ou seisin ð meisme les terres ou tents devant le dit claime.

THe second thing to be understood is, that if a man hath title to enter into any lands or tenements, if he dares not enter into the same lands or tenements nor into any parcell thereof for doubt of beating, or for doubt of maiming, or for doubt of death, if he goeth and approach as neere to the tenements as he dare for such doubt, and by word claim the Lands to be his, presently by such claime he hath a possession and seisin in the lands, as well as if he had entred indeed, although he never had possession or seisin of the same lands or tenements before the sayd claime.

Vide Sect. preced.

THere is to bee observed, that every doubt of feare is not sufficient, for it must concerne the safety of the person of a man, and not his houses or goods, for if he feare the burning of his houses, or the taking away or spoyling of his goods, this is not sufficient, because he may recover the same, or dammages to the value without any corporall hurt.

7.E.4 21. 39.H.6.5.

Again if the feare doe concern the person, yet it must not be a vaine feare, but such as may befall a constant man, as if the adverse party lye in wait in the way with weapons, or by words menace, to beat, mayhem or kill him, that would enter, and so in pleading must hee shew some just cause of feare, for feare of it selfe is internall and secret. But in a speciall verdict, if the Jurors doe finde, that the Disseisee did not enter for feare of corporall hurt, this is sufficient, and shall be intended that they had evidence to prove the same. Talis enim debet esse metus qui cadere potest in virum constantem, & qui in se continet mortis periculum, & corporis cruciatum. Et nemo tenetur se infortuniis & periculis exponere.

39.E.3.28. 11.R.2.tit.dures 2. 12.H.4.19.20.

Bract.lib.2.fo.15.b. Britton fol.19. 66. Fleta lib.3.cap.7.& lib.2.cap. 54.49.E.3.14.14.H.4.13. 39.Ass.11. 11.H.6.51.38.H.6.27. 39.H.6 36.5. 20.H.6.28. 4.E.4.17.12.E. 47.28. H.6.8.41.E.3.9. 11.H.4 6. 8.Ass.25. Vide Sect.434. W.2.cap.49. 13.H.4.dures 20.

And it seemeth that feare of imprisonment is also sufficient, for such a feare sufficeth to avoyd a Bond or a Deed, for the Law hath a speciall regard to the safety and liberty of a man. And imprisonment is a corporall dammage, a restraint of liberty, and a kinde of captivity. But see in the second part of the Institutes, W.2.cap 49. a notable diversity betweene a claime or an entry into land, and the avoydance of an Act or Deed for feare of battery.

¶ *Per tiel claime il ad un possession & seisin &c.* Here is to be observed, that there be two manner of Entries, viz. an Entry in Deed and an Entry in Law. An Entry in Deed is sufficiently knowne; an entry in law is when such a claime is made as is here expressed, which entry in Law is as strong and as forcible in Law as an entry in Deed, and that as well where the Lands are in the hands of one by title as by wrong. And therefore upon such an entry in Law an Assise doth lye, as well as upon an entry in Deed, and such an entry in Law shall avoyd a warranty, &c.

Vide Sect.378. 11.H.6.51.

Vide Sect.442. Pl.Com.93.in Ass de fresshforce. The Parson of Honylanes case.

But here is a diversity to be observed betweene an entry in Law, and an Entry in Deed, for that a continuall claime of the Disseisee being an entry in Law shall vest the possession and seisin in him for his advantage, but not for his disadvantage. And therefore if the Disseisee bring an assise, and hanging the assise, he make continuall claime, this shall not abate the assise, but he shall recover dammages from the beginning, but otherwise it is of an entry in Deed. See more of this matter after in this Chapter, Sect.422.

Sect.

Sect. 420.

CEt que la ley eſt tiel, il eſt bien prove per un plee dun aſſiſe en le Liver daſſ. An.38.E.3.P.32. le tenor de quel enſuiſt en tiel forme. En le County de Dorſet devant les Juſtices trove fuit per verdict daſſiſe, que le plaintife que avoit droit per diſcent de heritage daver les tenements mis en plaint, al temps del morant ſon anceſter, fuit demurrant en le ville ou les tenements fueront, & per parole claym les tenements enter ſes vicines, mes pur doubt de mort il noſa approcher les tenements, mes port laſſiſe, & ſur ceſt matter trove, agard fuit que il recovera, &c.

AND that the Law is ſo, it is wel proved by a plea of an Aſſiſe in the Booke of Aſſiſes, *An.*38.*E.*3.*P.*32. the tenor whereof followeth in this manner. In the County of *Dorſet* before the Juſtices, it was found by verdict of Aſſiſe, that the Plaintife which had right by diſcent of Inheritance to have the tenements put in plaint, at the deceaſe of his Anceſtor was abiding in the Town where the tenements were, and by paroll claimed the tenements amongſt his Neighbours, but for feare of death he durſt not approach the tenements, but bringeth his Aſſiſe, & upon this matter found, it was awarded that he ſhould recover, &c.

CHere it appeareth that our Booke Cafes are the beſt proofes what the Law is, Argumentum ab authoritate eſt fortiſsimum in Lege. And for proofe of the Law in this particular caſe, Littleton here citeth a caſe in 38.E.3. but it is miſprinted, for the originall according to the truth is, In the Booke of Aſsiſes, 38.E.3. p.23. and not placito 32. for there be not ſo many pleas in that yeare. And after the example of Littleton, Booke cafes are principally to be cited for deciding of caſes in queſtion, and not any private opinion, Teſte meipſo. More ſhall be ſaid of the matter implyed in this Section in the next following. 38.Aſſ.p.23.

Sect. 421.

CLA tierce choſe eſt a entender, deins quel temps & per quel temps le claime que eſt dit cõtinuall claime, ſerbera & aidera celuy que fit le claymie & ſes heires. Et quant a ceo eſt aſcavoir, que celuy que ad title dẽter, quant il voyet faire ſon claime, ſi il oſaſt approacher la

THe third thing is to know within what time & by what time the claim which is ſaid continuall claim ſhall ſerve and aid him that maketh the claim, and his heirs. And as to this, it is to be underſtood, that he which hath title to enter, when he will make his claime, if he dare approach the Land then

¶ *Coviẽt a luy dauoyder & approcher auxi pres, &c.* By this it ſhould ſeeme, that by the authority of our Author, if the Diſſeiſee commeth as neer to the Land as he dare, & maketh his claim, that ſhould be ſufficient, albeit he be not within the view.

And the great authority of the Bookes (*) in 9.H.4. (being by the whole Court) is not againſt this, for that caſe is put where there is no ſuch feare, as here our Author mentioneth in him that makes the continuall claime, and (*) 9.H.4.3.

and then hee that makes the continuall claime ought to be within the view of the land, and therefore the authority of this booke, as it is commonly conceived, is not against the opinion of our Author in the point aforesaid. But then it is further objected, that the said booke is against another opinion of our Author in this Section, viz. that where there is no feare, &c. hee that maketh a continuall claime ought to goe to the land or to parcell thereof to make his claime, and therefore in that case he cannot make a claime within the view of the Land.

(*) 11.H.6.51. agrees with our Author in this point.

terre donqs il covient aler a la terre ou a parcel de ceo, et faire son claime, et sil no-sast approcher la tre pur doubt ou pauor d baterie, ou mayhē, ou mort, donques covient a luy daler & approcher aury pres come il osast vers la terre, ou parcel de ceo, a faire son claim.

he ought to goe to the land, or to parcell of it, and make his claime, and if he dare not approach the Land for doubt or feare of beating or maiming, or death, then ought he to goe and approach as neere as hee dare towards the land or parcell of it to make his claime.

To this it is answered, that where a continuall claim shall devest any estate in any other person in any lands or tenements, there, as it hath beene said, he that maketh the claime ought to enter into the land or some part thereof, according to the opinion of our Author: but where the claime is not to devest any estate, but to bring him that maketh it into actuall possession, there a claime within the view sufficeth; as upon a discent, the heire having the freehold in law may claime land within the view to bring himselfe into actuall possession, and in that sense is the opinion of Hull and the Court to be intended. Et sic in similibus. But yet the entry into some parcell in the name of the residue is the surest way.

Vid. Sect. 177.

Sect. 422.

¶ *Deins lan, & le jour.* It is to bee observed that the Law in many cases hath limited a peare and a day to be a legall and convenient time for many purposes. As at the common Law upon a fine or finall judgement given in a writ of right the party grieved had a peare and a day to make his claime. So the wife or heire hath a peare and a day to bring an appeale of death. If a Villein remained in ancient Demesne a peare and a day he is prividged. If a man be wounded or poysoned, &c. and dyeth thereof within the peare and the day, it is felony. By the ancient Law if the Fossee of a Disseisor had continued a peare and a day, the entry of the Disseisee for his negligence had beene taken away. After judgement given in a reall action, the plaintife within the peare and the day may have a Habere facias seisinam, and in an action of debt, &c. a Capias, Fieri facias, or a Levarisacias. A protection shall be allowed but for a year and a day, and no longer, and in many other cases.

Vid. Sect. 385. 426. 9.H.4.5. 14.H.4.36. 5.E.3.37. Pl.Com. 356. 357.367. Mirror, cap. 2. Sect. 18. Britton, fol. 45.b. & 126.

CEt si son adversary q occupia le terre, morust seisie en fee, ou en fee taile deins lan et le jour apres tiel claim, per q̄ les tenemēts discendont a son fits come heire a luy, uncore poit celuy que fist le claime entrer sur le possession le heire, &c.

AND if his adversary who occupieth the land dyeth seised in fee, or in fee taile within the peare and a day after such claime, whereby the lands descend to his son as heire to him, yet may hee which make the claime enter upon the possession of the heire, &c.

v. 237. b. & 238. a.

But this time of a peare and a day in case of continuall claime, is since our Author wrote altered by the said Statute of 32.H.8.cap.33. as before it appeareth. Ins. f. 238. a.

Vid. Sect. 385.

Sect.

Sect. 423.

MEs en ceſt cas apres lan & le jour que tiel claime fuit fait, ſi le pere donques mourſt ſeiſie ademain procheine aps lan & le jour, ou un auter jour apres, &c. donques ne poit celuy que fiſt le claim̃ entrer: & pur ceo ſi celuy que fiſt le claime voit eſtre ſure a touts temps que ſon entre ne ſerra toll per tiel diſcent, &c. il covient a luy que deins lan & le jour apres le primer claime fait, de faire un auter claime en le forme avantdit, & deins lan & le jour apres le ſecond claime fait, de faire le tierce claime en meſme le maner, & deins lan & le jour de le tierce claime, de faire un auter claime, & iſſint ouſter, ceſtaſcavoir, de faire, un claime deins cheſcun an & jour procheine aps cheſcun claime fait durant la vie ſon adverſary, & donques, a quecunqs temps q̃ ſon adverſary morſt ſeiſie, ſon entry ne ſerra tolle per nul tiel diſcent. Et tiel claim̃ en tiel maner fait, eſt pluis communement priſe & noſme Continuall Claime de luy que fiſt le claime.

BUt in this caſe after the yeare and the day that ſuch claime was made, if the Father then dyed ſeiſed the morrow next after the yeare and the day, or any other day after, &c. then cannot hee which made the claime enter: And therefore if hee which made the claime will be ſure at all times that his entry ſhall not be taken away by ſuch diſcent, &c. it behoveth him, that within the yeare and the day after the firſt claime made, to make another claime in forme aforeſaid, and within the yeare and the day after the ſecond claime made, to make the third claime in the ſame manner, and within the yeare and the day after the third claim to make another claim, and ſo over; that is to ſay, to make a claime within every yeare and day next after every claim made during the life of his adverſary, and then at what time ſoever his adverſary dyeth ſeiſed, his entry ſhall not be taken away by any diſcent. And ſuch claime in ſuch manner made is moſt commonly taken and named Continuall Claime of him which maketh the claime, &c.

¶ It is to be obſerved, that the yeare and the day ſhall be ſo accounted, as the day whereon the Claime was made ſhall be accounted one: as for example, If the Claime were made 2. Die Martii, that day ſhall be accounted for one, for Littleton ſaith in the Section next before (after the Claime made) and then the yeare muſt end the firſt day of March, and the day after is the ſecond day of March. Vide Sect. 385.

See for the Computation of the yeare, De anno biſextili, and of the day naturall and artificiall, and other parts of the yeare, (a) Bracton, (b) Britton, and (c) Fleta excellent matter.

(a) Bract. fol. 264, 344, 359.
(b) Britton fol. 209.
(c) Fleta lib. 6. cap. 11. Statute de anno Biſextili 21. H. 3. Dyer 17. Eliz. 345.

Sect. 424.

MEs uncore en le cas avantdit, lou ſon adver-

BUt yet in the caſe aforeſayd, where his Adverſary dyeth

ſarie mozuſt deins lan & la jour prochein apres le claime, ceo eſt en Ley un Continual Claime entant, que ladverſary deins lan & le jour prochein apres meſme la claime mozuſt. Car il ne beſoigne a celuy que fiſt ſon claime de fait aſcun auter claime, mes a quel temps que il voit deins meſm lan & jour, &c.

within the yeare and the day next after the claim, this is in law a Continuall Claime, inſomuch as his adverſary within the year and the day next after the ſame claim, dieth. For he which made his claime, needeth not to make any other claime, but at what time he wil within the ſame yeare and day, &c.

Vide Sect. 414.

This is evident.

Sect. 425.

ITem, ſi ladverſary ſoit diſſeiſie deins lan & le jour apres tiel claime, & le diſſeiſor ent mozuſt ſeiſie deins lan & le jour, &c. tiel mozant ſeiſie ne griebera my celuy que fiſt le claim̃ mes que il poit enter, &c. Car quecunque ſoit que mozuſt ſeiſie deins lan & le jour pcheine apres tiel claim̃ fait, ceo ne griebera my celuy que fiſt le claime, mes que il poit enter, &c. coment que fuerount pluſors mozant ſeiſie, & pluſors Diſcẽts deins m̃ lan & l' jour, &c.

ALſo if the Adverſary be diſſeiſed within the year and the day after ſuch claime, and the Diſſeiſor thereof dyeth ſeiſed within the year and the day, &c. ſuch dying ſeiſed ſhal not grieve him which made the claim, but that he may enter, &c. for whoſoever he be that dyeth ſeiſed within the yeare and the day after ſuch claime made, this ſhall not hurt him that made the claime, but that he may enter, &c. albeit there were many dyings ſeiſed, and many Diſcents within the ſame year and day, &c.

HEre it appeareth, That the Continuall Claime doth not only extend to the firſt Diſſeiſor, in whoſe poſſeſſion it was made, but to any other Diſſeiſor, that dyeth ſeiſed within the yeare and day after the Continuall Claime made. And whereas our Author ſpeaketh of a ſecond Diſſeiſor, &c. herein is likewiſe implyed not only Abators and Intruders, but the Feoffees or Donees of the Diſſeiſors, Abaters or Intruders, & any other Feoffee or Donee immediate or mediate, dying ſeiſed within the yeare and day, of ſuch Continuall Claime made.

Sect. 426.

ITem, ſi home ſoit diſſeiſie, & le Diſſeiſor mozuſt ſeiſie deins lan & le jour prochein apres le diſſeiſin fait, per que les Tenements diſcendont a ſon

ALſo if a man be diſſeiſed, and the diſſeiſor dyeth ſeiſed within the yeare and day next after the Diſſeiſin made, whereby the Tenements diſcend to his Heire, in this

heire

heire, en cest case lentrie le Disseisee est toll, car lan & le jour que aidyoit le Disseisee en tiel case, ne serra pris de temps de title dentre a luy accrue, mes tantsolement de temps del claime per luy fait en le manner avantdit, & pur cel cause il serroit bon p̄ tiel disseisee, pur faire son claime en auxy breve temps que il puissoit apres le disseisin, &c.

case the entrie of the disseisee is taken away, for the yeare and day which should aid the Disseisee in such case, shall not be taken from the time of title of entry accrued unto him, but onely from the time of the claime made by him in manner aforesaid. And for this cause it shall be good for such disseisee to make his claime in as short time as he can after the Disseisin, &c.

¶ This in case of a Disseisor is now holpen by the Statute made since Littleton wrote, as hath beene said; for if the Disseisor dye seised within five yeares after the Disseisin, though there be no Continuall Claime made, it shall not take away the Entry of the Disseisee, but after the five yeares, there must be such Continuall Claime as was at the Common Law: But that Statute extendeth not to any Feoffee or Donee of the Disseisor immediate or mediate, but they remaine still at the Common Law, as hath beene said. ibid. 32. H. 8. cap. 33. Vide Sect. 385. 412.

Sect. 427.

¶ Item, si tiel Disseiser occupia la terres per xl. ans, ou per plusors ans sans ascun claim fait per le disseisee, &c. Et le Disseisee per petit space devaunt le mort del Disseisor fait un claime en le forme avantdit, si issint fortunast que deins lan & le jour apres tiel claime le Disseisor mortust, &c. lentry le Disseisee est congeable, &c. & pur ceo il serroit bone pur tiel home que ne fist claime que ad bone title dentrie, quant il oyet que son adversary gist languishment, de faire son claime, &c.

ALso if such Disseisor occupieth the lands forty yeares, or more yeares, without any claime made by the Disseisee, &c. and the Disseisee a little before the death of the Disseisor makes a claime in the form aforesaid, if so it fortuneth, that within the year and the day after such claim, the Disseisor die, &c. the entry of the Disseisee in congeable, &c. And therefore it shall bee good for such a man which hath not made claime, and which hath good title of entry, when he heareth that his adversary lyeth languishing, to make his claime, &c.

¶ This is evident enough, and in respect of that which hath beene said, needeth not to bee explained.

Sect. 428.

¶ Item, sicom̄ est dit en les cases mises, lou home

ALso as it is said in the cases put where a man hath title

¶ Here title is taken in this large sense to include a right. as in 252. b. 3

¶ Ascun auter title, &c.

&c. Here is implyed Abators or Intruders, and not only their Disseisors, but the Feoffees or Donees of disseisors, Abators, or Intruders, or any other so long as the entry is congeable.

ad title dentre pur cause dun Disseisin, &c. Mesme la Ley est lou home ad droit dentre per cause de ascun auter title, &c,

of entry by cause of a Disseisin, &c. the same Law is where a man hath right to enter by cause of another title, &c.

Sect. 429.

ITem, ỏ les dits Presidents poies scaver (mon fits) deux choses. Un est, lou home ad title dentre sur un Tenant en le taile, sil fist un tiel claime a la fre donques est lestate Taile defeat, car cel claime est come entre fait per luy, & est de mesme leffect en Ley, sicome il fuisoit sur mesmꝰ tenements, & ust entr̃ en mesmꝰ les Tenements come devant est dit. Et donques quant le Tenant en le taile immediate puis tiel claime continua son occupation en les tenements, ceo est un disseisin fait de mesmes les tenements, a celuy que fist tiel claime, & sic per consequens, le Tenant a donques ad fee simple.

ALso of the said foresaying thou maist know (my sonne) two things. One is, where a man hath title to enter upon a Tenant in taile, if he maketh such a claime to the land, then is the estate taile defeated, for this claime is as an entry made by him, and is of the same effect in Law, as if he had bin upon the same tenements, and had entred into the same, as before is said. And then when the tenant in taile immediately after such claime continue his occupation in the lands, this is a Disseisin made of the same Tenements to him which made such claime, and so by consequent, the tenant then hath a Fee simple.

¶ *Presidents.* This should be Precedents, and so is the originall, and this agreeth with the right sense of Littleton.

And here it appeareth, That a Continuall Claime, which is an Entry in Law, is as strong as an Entry in deed.

Vide sect. 550. and 659. &c.

¶ *Title de entry.* Here Title de entrie is taken in the large sense for right of Entry.

Sect. 430.

CLe second chose est, que auxy sovent que il que ad droit dentre fait tiel claime & ceo nient contristeant son adversary continua son occupation, auxy sovent ladversary fait tort & disseisin a celuy que fist le claime. Et

THe second thing is, That as often as hee which hath right of entry maketh such claime, and this notwithstanding his adversary continue his occupation, so often the Adversary doth wrong and Disseisin to him which made the claime.

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pur cel cause auxy lovent poit celuy que fist m̃ le claime pur chescum tiel tort & disseisin fait a luy, aver un briefe de trīs. Quare clausum fregit, &c. & recovera ses damages, &c.

And for this cause so often may he which makes the same claime for every such wrong and disseisin done unto him, have a Writ of trespasse. *Quare clausum fregit. &c.* and recover his dammages, &c.

¶ Hereby also it appeareth, that an entry in Law is equivalent to an entry in deed.

¶ *Aver a breve de trespasse, Quare clausum fregit, & recovera ses damages.* The Disseisee shall have an action of trespasse against the Disseisor, and recover his dammages for the first entry without any regresse but after regresse he may have an action of trespasse with a Continuando, and recover as well for all the meane occupation as for the first entry. And here note that Littleton doth here include costs within dammages.

Sect. 431.

¶ Ou il poit aver un briefe sur l statute le Roy R. I. second, fait lan de son raigne 5. suppolant p son briefe, que son adversary avoit ent & les terres ou tenements celuy que fist le claime, ou son entry ne fuit pas done per la ley, &c. & per tiel action il recovera ses dammages. &c. Et si le case fuit tiel, que ladversary occupiast les tenements ove force & armes ou ove multitude de gents a tẽps de tiel claime, &c. immediate apres mesme le claime, poit celuy que fist le claime, pur chescum tiel fait aver un briefe de forcible entry, & recovera ses treble dammages, &c.

OR he may have a Writ upon the statute of *R.* 2. made in the fift yeare of his Reigne, supposing by his Writ that his Adversary had entred into the lands or tenements of him that made the Claime, where his entry was not given by the Law, &c. and by this action he shall recover his dammages, &c. and if the case were such that the adversary occupied the tenements with force and armes or with a multitude of people at the time of such claime, &c. immediately after the same claime may hee which made the claime for every such act have a Writ of forcible entry, & shall recover his treble dammages, &c.

¶ This is the statute of 5. R 2. cap. 7. 37. H. 6. 35. 34. H. 6. 30. 13. H. 7. 15. 10. H. 6. 14. 2. E. 4. 18. 21. E. 4, 5. 74. 13 E. 2. 3. 27. Ass. 64. 38. Ass. 9. 44. E. 3. 20. 10 H. 7. 27. Keylwey 1. b. 5. R. 2. cap. 7.

¶ *Per tiel action il recovera ses dammages.* This is to be understood, that he shall recover dammages for the first forcions entry, but not for the meane profits in this action though he made a regresse. And here note that also he shall recover his costs of suit expensæ litis, which Littleton doth include within these words (dammages, &c.) 2. E. 4. 24. b. 9. E. 4. 8. 16. H. 7. 6. a.

¶ *Dammages.* Damna in the Common Law hath a speciall signification for the recompence that is given by the Jury to the Plaintife or Defendant, for the wrong the Defendant hath done unto him.

¶ *Multitude.* One or more may commit a force, three or more may commit an unlawfull assembly, a riot or a rout. A multitude here spoken of (as some have said) must beten or more. Multitudinem decem faciunt. And so (say they) it is said, de grege hominum. But I could never read it restrained by the Common Law to any certain number, but left to the discretion of the Judges.

¶ *Un briefe de forcible entrie & recovera ses treble dammages.* This writ is

8.H.6.cap.9.3.E.4.19.24. F.N.B.248.11.E.4.11.b. 6.H.7.12.b.22.H.6.37. 19.H.6.Regiſter 97. 22.H.6.57.F.N.B.249.2.

is grounded upon the ſtatute of 8.H.6. and lieth either where one entreth with force, or where he entreth peaceably and detaineth it with force, or where he entreth by force, and detaineth it by force. And in this action without any regreſſe the Plaintife ſhall recover treble dammages, as well for the meane occupation as for the firſt entry by force of the ſtatute. And albeit he ſhall recover treble dammages., yet ſhall he recover coſts which ſhall be trebled alſo.

One may commit a forcible entry as hath beene ſaid, in reſpect of the armour or weapons which he hath that are not uſually born, or if he doe uſe violence and threats, to the terrour of another. And if three or foure goe to make a forcible entry, albeit one alone uſe the violence, all are guilty of force. If the Maſter commeth with a greater number of ſervants than uſually attend on him, it is a forcible entry.

10.H.7.12.

33.H.6.20.

It is to be underſtood that there is a force implyed in Law, as every Treſpaſſe & Rebous and Diſſeiſin implyeth a force, and is vi & armis, & there is an actuall force, as with weapons, number of perſons, &c. and when an entry is made with ſuch actuall force, an action doth lye upon the ſaid ſtatute. See before more of force and armes, Sect. 240.

Sect. 432.

ITem, il eſt a veier, ſi le ſervant dun home que ad title denter, poit per le commandement ſon Maſter fait continuat claime pur ſon Maſter ou non.

ALſo it is to be ſeene, if the ſervant of a man who hath title to enter, may by the commandement of his Maſter make continuall claim for his Maſter or not.

This needeth no explication.

Sect. 433.

CEt il ſemble que en aſcuns caſes il poit ceo faire, car ſil per ſon commandement vient a aſcun parcel de la terre & la fait claime, &c. en le noſme ſon Maſter, ceſt claime eſt aſſets bone pur ſon Maſter, pur ceo que il fait tout ceo que ſon Maſter covient faire ou devoit faire en tiel cas, &c. Auxy ſi le Maſter dit a ſon ſervant, que il ne oſaſt bener a la terre, ne aſcun parcel de la terre, pur faire ſon claime, &c. & que il ne oſaſt approcher pluis prochein a la terre forſque a tiel lieu appell Dale, & commanda ſon ſervant daler a meſme le lieu de Dale, & la faire un claime pur luy, &c. ſi le ſervant iſſint fait, &c. ceo ſemble auxy bone claime pur ſon Maſter, ſicome

AND it ſeemeth that in ſome caſes he may doe this; for if he by his commandement commeth to any parcell of the Land, and there maketh claime, &c. in the name of his Maſter, this claime is good enough for his Maſter, for that he doth all that which his Maſter ſhould or ought to doe in ſuch caſe, &c. Alſo if the Maſter ſaith to his ſervant that hee dares not come to the land, nor to any parcell of it to make his claime, &c. and that he dare approach no neerer to the land than to ſuch a place called Dale, and command his ſervant to goe to the ſame place of Dale, and there make a claime for him, &c. if the ſervant doth this, &c. this alſo ſeemeth a good claime for his Maſter, as if his Maſter were

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son Master la fuit en proper person, pur ceo que le servant fist tout ceo que son Master osast et devoit faire per la ley en tiel case, &c.

there in his proper person, for that the servant did all that which his Master durst, and ought to doe by the law in such a case, &c.

¶ HEre it appeareth that where the servant doth all that which he is commanded, and which his Master ought to doe, there it is as sufficient as if his master did it himselfe, for the rule is, Qui per alium facit per seipsum facere videtur.

¶ *Per commandement.* If an infant or any man of full age have any right of Entrie into any lands, any stranger in the name and to the use of the Infant or man of full age may enter into the lands, and this regularly shall vest the lands in them without any commandement precedent or agreement subsequent. (*) But if a Disseisor levie a fine, with Proclamation according to the statute, an estranger without a commandement precedent, or an agreement subsequent within the five yeares cannot enter in the name of the Disseisee to avoid the Fine. And that resolution was grounded upon the construction of the Statute of 4.H.7. cap.24. But an assent subsequent within the five years should be sufficient. Omnis enim ratihabitio retrotrahitur, & mandato equiparatur, as hath beene said. 245. a.

7.E.3.69.2.b. 45.E.3.Release 28. 45.E.3.tit.Briefe 589. 20.E.3.62.per Thorp. 11.Ass.p.11. 39.Ass.p.18. 10.H.7.12.a. 31.H.8.tit.entr.Cong. & tit.Fanxifier recovery 29. (*) Lib.9.fo.106.a. the Lord Awdleyes case.

¶ *Auxi si le master ait a son servant que il ne osast, &c.* Here it appeareth, that where the servant pursueth the commandement of his Master, and doth all that which his Master durst and ought to doe by the Law, this is sufficient. And although the Master feareth more than the servant, or admit that the servant hath no feare at all, yet if he goeth as farre as his Master durst and as he commanded, it is sufficient. And this is implyed in this Section.

Sect. 434.

CAury si home soit cy languishant, ou cy decreppyte, que il ne poit per nul maner bener a le terre, ne a aleun parcel d̄ ycel, ou si un recluse soit, q̄ ne poit per cause de son order aler hors de sa meason. Si tiel maner de person commaunda son servant daler & faire claime pur luy, & tiel servant ne osast aler a le t̄re, ne a aleun parcel de ceo pur doubt de batery, mayhem, ou mort, &c. & pur cel cause tiel serv̄at vi͞et aury pres a la terre come il osast pur tiel

ALso if a man be so languishing, or so decrepite that he cannot by any meanes come to the land nor to any parcell of it, or if there bee a recluse which may not by reason of his order goe out of his house, if such manner of person command his servant to goe and make claime for him, and such servant dare not goe to the land nor to any parcell of it for doubt of beating, mayhem, or death, &c. and for this cause the servant commeth as neer to the land as hee dareth for such doubt

REgularly it is true that where a man doth lesse than the Commandement or Authority committed unto him, there (the Commandement or Authority being not pursued) the act is void. And where a man doth that which he is authorized to doe and more, there it is good for that which is warranted, and void for the rest, yet both these rules have divers exceptions and limitations.

For the first, Littleton here putteth a case where the servant doth lesse than he is commanded, and yet it sufficeth for that Impotentia excusat legem, for seeing the master cannot, and the servant dare not enter into the land, it sufficeth that he come as neere to the land as he dare.

If a man makes a Letter of Attorney to deliver seisin to I.S. upon condition, and the Attorney delivereth it absolute, this is void: and so some hold if the warrant bee absolute, and he delivereth seisin

11.H.4.3. 12.Ass.24. 26.Ass.39.

See before Sect.419.

cc. Pl. 192

seisin upon Condition the liuery is void.

¶ *Pur battery, mayhem, ou mort.* See the second part of the Institutes W.2 cap.49. a diuersity betweene the making of an Entry or Claime, and the avoydance of an Act or Deed.

¶ *Autrement le master serroit en tresgrand mischiefe.* Argumentum ab inconvenienti est validum in lege, quia lex non permittit aliquod inconveniens. And as hath bin often observed before, Nihil quod est inconveniens est licitum.

46.E.3.Petition 18.
33.H.6,8.
43.E.3.8.b.30.a.

¶ *Recluse.* Recluſus, Heremita, ſeu Anachorita, so called by the order of his religion he is so mured or shut up, Quod ſolus ſemper ſit, & in clauſura ſua ſedet; and can neuer come out of his place, Secuſm enim & extra converſationem civilem hoc profeſſionis genus ſemper habitat: Note here, albeit the Recluse or Anachorite be shut up himselfe, so as he by his order is not to come out in person, yet to avoid a discent, he must command one to make claime, and such a Recluse shall alwayes appeare by Attorney in such cases where others must appeare in proper person, Impotentia enim excuſat legem.

doubt, & fait l' claim, &c. pur ſon Maſter, il ſemble que tiel claim pur ſon Maſter eſt aſſets fort, & bon en ley. Car autrement ſon Maſter ſerroit en treſgrand miſchiefe, car il bien poit eſtre que tiel perſon q̄ eſt languiſhant, decrepite, ou recluſe, ne poit trober aſcun ſervant que oſaſt aler a la terr̄, ne aſcun parcel de cel pur faire le claime pur luy, &c.

and maketh the claim, &c. for his Maſter, it ſeemeth that ſuch claime for his Maſter is ſtrong enough, and good in Law. For otherwiſe his Maſter ſhould bee in a very great miſchiefe, for it may well be that ſuch perſon which is ſicke, decrepit, or recluſe, cannot finde any ſervant which dare goe to the land or to any parcell of it to make the claime for him, &c.

Section 435.

MEs ſi le Maſter d̄ tiel ſervant ſoit de bone ſane, & poit & oſaſt bien aler a les tenements, ou a parcel de ceo de faire ſon claime, &c. ſi tiel Maſter commanda ſon ſervant daler a aſcun parcel de la terre a faire claime pur luy, & quant le ſervant eſt an alant de faire le commandement de ſon Maſter, il oye per le voy tiels choſes que il ne oſaſt bener a aſcun parcel de la terre pur fair̄ le claime pur ſon Maſter, & pur ceo cauſe il bient aury pres la t̄re come il oſaſt pur doubt de mort, & la fait claime pur ſon Maſter, & en le noſme de ſon Maſter, &c. il ſemble que le doubt en le ley en tiel caſe ſerroit, ſi tiel claime availera ſon Maſter, ou nemy.

BUt if the Maſter of ſuch ſervant bee in good health, and can and dare well goe to the lands or to parcell of it to make his claime, &c. if ſuch Maſter command his ſervant to goe to any parcell of the land to make claime for him, and when the ſervant is in going to doe the commandement of his Maſter, he heareth by the way ſuch things as he dare not come to any parcell of the land to make the claime for his Maſter, and therefore he commeth as neere to the land as he dare for doubt of death, and there maketh claime for his Maſter, and in the name of his Maſter, &c. it ſeemeth that the doubt in law in ſuch caſe ſhall be, whether ſuch claime ſhall availe his Maſter

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pur ceo que le ſervant ne fiſt tout ceo que ſon Maſter al temps de ſon commandement oſaſt faire, &c. Quære.

or not, for that the ſervant did not all that which his Maſter at the time of his commandement durſt have done, &c. *Quare.*

¶ This Continuall Claime is void, for that the ſervant doth leſſe than that which is expreſſely commanded, and there is no impotency or feare in the Maſter.

Sect. 436.

¶ Item aſcuns ont dit que lou home eſt en priſon, & eſt diſſeiſie, & le diſſeiſor morust ſeiſie durant le temps q̄ le diſſeiſee eſt en priſon, per que les tenements diſcendont al heire del diſſeiſor, ils ont dit, que ceo ne noiera my le diſſeiſee que eſt en priſon, mes que il bn̄ poit enter, nient obſtant tiel diſcent, pur ceo que il ne puiſſoit fait continual claim̄, quant il fuit en priſon.

ALſo ſome have ſaid that where a man is in priſon and is diſſeiſed, and the Diſſeiſor dyeth ſeiſed during the time that the Diſſeiſee is in priſon, whereby the tenements deſcend to the Heire of the Diſſeiſor, they have ſaid that this ſhall not hurt the Diſſeiſee which is in priſon, but that he well may enter, notwithſtanding ſuch a diſcēt, becauſe hee could not make continuall claim when he was in priſon.

¶ *Quant home eſt en priſon & eſt diſſeiſie.* For if he be diſſeiſed when he is at large, & the diſcent is caſt during the time of his impriſonment, this diſcent ſhall binde him. 9.H.7.24.Pl.Com.360.

Excuſatur autem quis quod clameum ſuum non appoſuerit, ſi tempore litigii in priſona detentus fuerit, ita quod venire non poſit, nec mittere, quia nulli vertitur in dubium, & ubi eadem ratio & idem jus erit, ideo videtur quòd excuſari debet quis ſi per vim majorem, vel per fraudem, extra priſonam detentus fuerit, ita quod venire non poſit nec mittere, dum tamen hoc per certa judicia probari poterit. Bracton, lib.5.fol.436. Britton, fol.116.b. Fleta, lib.6.cap.52.53. & lib.6.cap.7.& 14.

¶ *Pur ceo que il ne poit faire continual claime quant il fuit en priſon.* Here it is to bee obſerved by the authority of Littleton, that he is not enforced in this caſe by Law to doe it by his ſervant or any other by his warrant or commandement, for things done by deputy are ſeldome well done, but every man will ſee his own buſines moſt effectually ſpeeded & performed, and that it may be once ſpoken for all, the reaſon that a man impriſoned ſhall not be bound in this & the like caſes is, for that by the intendment of Law he is kept (as it is preſumed in Law) without intelligence of things abroad, and alſo that he hath not liberty to go at large to make Entry or Claime, or ſeek counſell. And ſo note a diverſity between a Recluſe who might have intelligence, and a man in priſon. Pl.Com.360.in Stowels caſe.

Sect.437.

¶ * MEs lopinion de touts les Juſtices, P.11.H.7. fuit, que ſi le diſſeiſin ſoit avant lenpriſonment, coment que le morant ſeiſie ſoit, il eſteant en le priſon, ſon entrie eſt tolle.

BUt the opinion of all the Juſtices, P.11.H.7. was, that if the diſſeiſin bee before the impriſonment, although the dying ſeiſed be, hee being in the priſon, his entry is taken away.

¶ This is of a new addition, and miſtaken, for there is no ſuch opinion, P.11.H.7. but it is, 9.H.7.fol.24.b.

Mirror cap.3.Britton, fol.21. Fleta,lib.1.cap. 28. & lib.2.cap 59. Bracton,lib.2.

¶ IL *reverſera tiel utlagarie.* Nota, the originall is, Reverſera tiel utlagarie per Briefe de Error, & ſo it would be amended: for Outlawries may be reverſed two maner of waies, viz. by Plea, or by writ of Error. By Plea, when the Defendant commeth in upon the Capias utlagatum, &c. he may by Plea reverſe the ſame for matters apparent, as in reſpect of a Superſedeas, Omiſſion of Proceſſe, Variance, or other matter apparent in the Record, and yet in theſe caſes ſome hold, That in another Terme the Defendant is driven to his writ of Error.

¶ ET auxy ſi tiel que eſt en priſon ſoit utlage in Action de debt, ou treſpaſſe, ou en appeal de Robberie, &c. il reverſera tiel utlagarie envers luy pnounce, &c.

AND alſo if hee which is in priſon be outlawed in an Action of Debt, or Treſpaſſe, or in an Appeale of Robbery, &c. hee ſhall reverſe this outlawry pronounced againſt him, &c.

2.E.4.1 4.E.4.10. 21.E. 4.73. 11.H.7.5. 21.H.6. 50.9.H.4.3. 21.H.6. Utlary 36. 7.H.6.27. 21.E.4.88. 22.E.4.37. 18.E.3.Villenage 47. 21.E.4.37. 33.H.6.45. 16. 44.E.3.Villeine 41. 4.H.4.19. 11.H.4.34. 3.Eliz.Dyer 192. 2.Eliz. 176. 5.Eliz.ibid.223. 19.H.6.2. 8.H.6.37. 37.H.6.19.

But for any matters in fact, as death, impriſonment, ſervice of the King, &c. he is driven to his writ of Error, unleſſe it be in caſe of Felony, and there in favorem vitæ he may plead it.

8.H.4.7. 21.H.7.13. 10.H.6.58. 20.H.6.20. 21.H.6.55. 22.H.6.18. 39.H.6.1. 33.H.6.51.45. 38.H.6.33. 21.E.4.94. 21.H.7.33 5.H.7.1. 12.H.6.8. 11.H.6.67.19. 1.E.4.2. 27.H.8.2. 38.Aſſ.pl.17. Vi.Sect.439.

But albeit impriſonment be a good cauſe to reverſe an Outlawry, yet it muſt be by proceſſe of Law in invitum, and not by conſent or covin, for ſuch impriſonment ſhall not abolde the Outlawry, becauſe upon the matter it is his owne act.

Section 438.

5.E.3.50.b. 7.H.6.38.

¶ THis is evident enough.

Fleta lib. 6.cap.67. & 24. Vid.W.2.cap.48. and the expoſition thereof, 2.part.Inſtit. 4.E.2.Diſcent 51.

¶ *Per Briefe derror.* For hee ſhall have no writ of Diſceit, becauſe the ſummons was according to the Law of the Land, by Summoners and Veiers, and the Land taken into the Kings hand by the Pernor.

¶ CAuxy ſi un recoverie ſoit p default vers tiel q̃ eſt en priſon, il avoidera le judgement p Briefe de Error, pur ceo que il fuit en priſon al temps de l'default fait, &c. Et pur ceo q̃ tiels matters de Record ne noyeñ celuy que eſt ẽ priſon, mes que ils ſerront reverſes, &c. à multo fortiori, il ſemble que un matter en fait, ſ. tiel diſcent ewe quãt il fuit ẽ priſon ne luy noyera, &c. ſpecialm̃t pur ceo q̃ il ne puiſſoit aler hors de priſon pur faire Continuall Claime, &c.

ALſo if a recovery bee by default againſt ſuch a one as is in priſon, he ſhal avoid the judgement by a writ of Error, becauſe he was in priſon at the time of the default made, &c. And for that ſuch matters of Record ſhal not hurt him which is in priſon, but that they ſhall bee reverſed, &c. *à multo fortiori*, it ſeemeth that a matter in fact, s. ſuch diſcent had when hee was in priſon, ſhall not hurt him, &c. eſpecially ſeeing he could not goe out of priſon, to make Continuall Claime, &c.

Bracton,lib.5.tract.3. Fleta,lib.6. cap.9.14 3.H.6.46. 38.E.3.5. 31.H.6. Barre.66. 12.H.4.13. 50.E.3.9. 3.H.6.48. 2.H.4.8. 5.H.7.3.F.N.B.17. Bract lib.4.fo.367,369. Glan.lib.1.cap.8. 28.H.6.11. 4.H.5. Challenge 153. Br.Saver.Def.45.

¶ *Per default.* Default is a French word, and Defalta is legally taken for Non-apparance in Court. There bee divers cauſes allowed by Law for ſaving a mans default, as firſt by Impriſonment, whereof Littleton here ſpeaketh. 2. Per inundationem aquarum. 3. Per tempeſtatem. 4. Per pontem fractum. 5. Per navigium ſubſtractum per fraudem petentis, non enim debet quis ſe periculis & infortuniis gratis exponere, vel ſubjacere. 6. Per minorem ætatem. 7. Per defenſionem ſummonitionis per Legem. 8. Per mortem Attornati ſi teneris in tempore non novit. 9. Si petens eſſoniatus ſit. 10. Si placitum mittatur ſine die. 11. Per Breve de Warrantia Diei. But ſickneſſe (as one holds) is no cauſe of ſaving a default, becauſe it may be ſo artificially counterfeited, that it cannot be knowne.

¶ *Record.*

¶ *Record.* Recordum is a memoriall or remembrance in Rolles of Parchment, of the proceedings and acts of a Court of Justice, which hath power to hold plea according to the course of the Common Law, of reall or mixt Actions, or of Actions quare vi & armis, or of personall Actions, whereof the debt or dammage amounts to 40 shillings or above, which wee call Courts of Record, and are created by Parliament, Letters Patents, or Prescription. Glanvil.lib.8.cap.8. Bracton, lib.3.t.1.c.6. Britton in prœmio & cap.27.

It is aptly derived of Recordari, which is to keep in memory or record, as it is said, Quod dicere nihil aliud est quàm recordari; and in the same sense the Poet useth it, Si rite audita recordor. Cicero. Virgil.

But legally Records are restrained to the Rolles of such only as are Courts of Record, and not the Rolles of inferiour, nor of any other Courts which proceed not secundum legem & consuetudinem Angliæ. Pl.Com.79.b.Mich.7. & 8.Eliz. Dier.242.

And the Rolles being the Records or Memorials of the Judges of the Courts of Record, import in them such incontrollable credit and verity, as they admit no averment, plea, or proofe to the contrary. 17.E.3.49. 37.H.6.21.b. 11.H.4.26.b. 21.H.6.34. Error.Br.73. 7.H.7.4.

And if such a Record be alledged, and it be pleaded, That there is no such Record, it shalbe tried only by it selfe: and the reason hereof is apparent, for otherwise (as our old Authors say, and that truly) there should never bee any end of controversies, which should be inconvenient. 19.Ass.7.lib.4.fol.52.in Rawlins Case.

Of Courts of Record you may reade in my Reports: but yet during the Terme wherein any judiciall act is done, the Record remaineth in the brest of the Judges of the Court, & is their remembrance, & therefore the Roll is alterable during that Terme, as the Judges shal direct, but when that Terme is past, then the Record is in the Roll, and admitteth no alteration, averment, or proofe to the contrary. Glanvil.lib.8.cap.8. Bracton, lib.3.fol.156. Britton, cap.27. Lib.6.fol.11. Jentlemans Case. & 30.45.Lib.7. fol 30. Lib.8.fol.60.b. & 67.a. 7.H.6.28. 19.H.6.9.

If a Grant by Letters Patents under the great Seale be pleaded & shewed forth, the adverse party cannot plead Nul tiel Record, for that it appeares to the Court, that there is such a Record: but inasmuch as it is in nature of a conveyance, the party may deny the operation thereof, therefore he may plead Non concessit, & prove in evidence that the King had nothing in the thing granted, or the like, and so it was adjudged. 18.Eliz. Dier.353. 3.Mar. Dier.129. Pl.Com.232.Seignior Berkleyes Case.

But to returne to Littleton: what then? Shall a man that is in prison be priviledged from Suits or Outlawries? Nothing lesse, for if the Tenant or Defendant be in prison, he shal upon motion, by order of the Court, be brought to the Barre, & either answer according to Law, or else the same being recorded, the Law shall proceed against him, and he shall take no advantage of his imprisonment. 16.H.7.11.b. 22.H.8. Record.Br.65. 39.H.6.4. 3.Eliz. Dier.187.Lib.6. fol.15.Edens Case.Mich. 31.& 32.Eliz.Rot.365. In Banke le Roy inter Eden, & Franklyn, & Browne.

¶ A multo fortiori. Here is an argument, A minori ad majus, and the force of our Authors argument is this, If a man in prison shall not be bound by a recovery by default for want of answer in Court of Record in a reall Action, which is matter of Record (the height and strength whereof hath been somewhat touched) à multo fortiori, a Dissent in the Country, which is matter of deed, shall not for want of claime binde him that is in prison. And as the argument à minori ad majus, doth ever hold (as our Author hath already told us) affirmatively, so the argument à majori ad minus doth ever hold negatively, as our Author here teacheth us: and the reason hereof is this; Quod in minori valet, valebit in majori; & quod in majori non valet, nec valebit in minori. 7.H.6.38. 8.H.6.16. Vide Sect.418.

¶ *Pur ceo que il ne poit aler hors de prison, &c.* By this it appeareth. That a man in prison by processe of Law ought to be kept in salva & arcta custodia, and by the Law ought not to goe out, though it be with a Keeper, and with the leave and sufferance of the Goaler: but yet imprisonment must be custodia, & non pœna; for, Carcer ad homines custodiendos, non ad puniendos dari debet.

Sect. 439.

CEn mesme le mañer il semble, lou home est hors du Royalme, en service le Roy, pur besoigne del Royalme, si tiel hõe soit disseisie quant il est en service le Roy, & le disseisor mot seisie, le disseisee

IN the same manner it seemeth, where a man is out of the Realme in the Kings service, for the businesse of the Realme, if such a one be disseised when hee is in service of the King, & the disseisor dieth,

¶ *Hors du Royalme,* (id est) extra Regnum; as much to say, as out of the power of the King of England, as of his Crowne of England: for if a man be upon the Seas of England, hee is within the Kingdom or Realm of England, and within the ligeance of the King of England, as of his Crowne of England. And yet alium mare is out of the jurisdiction of the cõmon Law, 6.R.2 Protect.48. Vide Sect.198.440,441.

Rot.Par. 8.H.3. 9.H.3. 15.H.3. Temps.E.1.Avowrie 192. Rot.Vascon. 22.E.1.m.8. Par.23.E.1.1.pars Par. 10.E.2. 8.E.2.Coron.399. Stanf.Pl.Coron.51.

Law, and within the jurisdiction of the Lord Admirall, whose jurisdiction is very ancient, & long before the reigne of Edward the third, as some have supposed, as may appeare by the Lawes of Oleron, (so called, for that they were made by king Richard the first when he was there) that there had been then an Admirall time out of minde, and by many other ancient records in the reignes of Henry the third, Edward the first, and Edward the second, is most manifest.

Vid.Sect.697.

See hereafter in another case, which Littleton put in his Chapter of Remitter, there he saith, Ouster le mere, beyond the sea. This great Officer in the Saxon Language is called, Aen mereal, (i.) over all the sea, Præfectus maris, sive classis, archithalassus: and in ancient time the office of the Admiralty was called, Custodia marinæ Angliæ, or Maritimæ Angliæ.

3.R.3.Cont.Claime 13. 4.E.3 46.

And note, Littleton saith not, Beyond the sea, or extra quatuor maria, for a man revera may be infra quatuor maria, and put out of the Realme of England. But infra quatuor maria, or extra, is taken by construction to be within the Realme of England, or the Dominions of the same.

But here a question may be demanded, what if a man be out of the Realme, and a Recovery is had against him in a Præcipe by default, whether shall he avoid it in a writ of Error, as well as he should do the Outlawry, or if he had been imprisoned at the time of such recovery by default? And it seemeth that hee shall not avoid the recovery, for by that meanes a man might be infinitely delayed of his Freehold and Inheritance, whereof the Law hath so great a regard. And few or none goe over, but it is either of their owne free will, or by suit, for what cause soever, and he is not in that case without his ordinary remedy, either by his writ of higher nature, or by a Quod ei deforceat. But Outlawry in a personall Action shall be avoided in that case, quia de minimis non curat Lex, and otherwise he should be without remedy. See Section 437. and note the diversity between that case of the imprisonment, and this of being beyond sea. And Littleton putteth the case of imprisonment, and omitteth the being beyond sea here: neither have I seen any Booke to warrant, That he that is beyond sea shall in this case avoid the recovery by default.

Bract.lib.5.fol.436.

¶ *En service le Roy.* Bracton sheweth, That the exception of being beyond sea is, quia fuit in servitio Domini Regis ultra mare, viz. apud talem locum, and that case is cleere: but you shall heare the opinion of Bracton in the next Section, where hee is not in the service of the King.

Sect.440.

Bract.lib.5.fol.436.b.& 163.Brit.fol.21.216, 217. Flet.lib.6.cap.52,53. 13.H.4.Triall 6. 9.H.4.3. 21.H.6.Error 27. 33.H.6.1. 21.H.6.34. 26.H.8.cap.18. 5.& 6.E.6.cap.11.

¶ And herewith the ancient Law of England is agreeable with Littleton, and the Law at this day. So as it is Vetus & constans opinio. Excusatur etiam quis quod clameum

¶ Item, auters ont dit, q̄ si ascun soit hors du Royalm̄ coment que il ne soit en service le Roy, si

Also others have said, that if a man bee out of the Realme, though hee bee not in the Kings

tiel

tiel home eſteant hors de le Royalme, eſt diſſeiſie en terres ou tenements deins le Royalme, & le diſſeiſour deby ſeiſie, &c. le diſſeiſee eſteant hors du Royalme, il ſemble a eux q̄ quant le diſſeiſee vient diens le Royalme, que il poit enter ſur heire le diſſeiſor, & ceo ſemble a eux per deux cauſes. Un eſt, que celuy que eſt hors du Royalme ne poit aver conuſans del diſſeiſin fait a luy per entendement de ley, nient pluis que choſe fait hors du Royalme poit eſtre try deins le Royalme per le ſereement de 12. & de compeller tiel home per la ley de faire continuall claime, le quel per lentendement de le ley ne puit aver aſcun notice, ou conuſance de tiel diſſeiſin, ceo ſerra inconvenient, & noſmeñt quant tiel diſſeiſin eſt fait a luy quant il eſt hors du Royalme, & auxy le mozant ſeiſie fuit quāt il fuit hors du Royalm: Car ē tiel caſe il ne poit per nul poſſibility ſplonque common preſumption faire continual claime. Mes auter-

Service, if ſuch a man being out of the Realme be diſſeiſed of Lands or Tenements within the Realme, and the Diſſeiſor dye ſeiſed, &c. the Diſſeiſee being out of the Realme, it ſeemeth unto them, that when the Diſſeiſee commeth into the Realme, that he may well enter upon the heire of the Diſſeiſor, &c. and this ſeemeth unto them for two cauſes: One is, that hee that is out of the Realme, cannot have knowledge of the Diſſeiſin made unto him by underſtanding of the Law, no more than that a thing done out of the Realm may bee tryed within this Realme by the oath of 12. men, & to compell ſuch a man to make continuall claime, wch by the underſtanding of the law can have no knowledge or coniſance of ſuch Diſſeiſin made or done, this ſhal be incōvenient, namely, whē ſuch a diſſeiſin is done unto him when hee was out of the Realme, & alſo the dying ſeiſed was done whē he was out of the realme, for in ſuch caſe he may not by poſſibility after the common

non appoſuerit, ut ſi toto tempore litigii fuit ultra mare quacunque occaſione. And this is alſo agreeable with our yeare Bookes.

¶ *Nient pluis que choſe fait hors del royalm poet eſtre trie deins le royalm per le ſeremēt de*

12. And in this rule of Law there is warily and truly put by Littleton, theſe words (by the oath of twelve men) meaning by a Jury. For by certificate a thing done beyond ſea may bee tryed, as Littleton himſelfe, Sect. 102. hath ſet downe. And all matters done out of the Realme of England concerning war, combate, or deeds of armes, ſhall bee tryed and termined before the Conſtable & Marſhal of England, before whom the tryall is by witneſſes, or by combate, and their proceeding is according to the civill Law, and not by the oath of twelve men, as Littleton here ſpeaketh. 42.E.3.2.& 3. Vide Sect.102. 1.H.4.ca.14. 13.H.4.f.4. 48.E.3.2.& 3.

This rule here rehearſed by Littleton, is worthy of explication. If an alien (for example borne in France) bring a reall Action, and the tenant plead that the Demandant is an alien borne under the obedience of the French King, and out of the leigeance of the King of England: ſhall this caſe want tryall, becauſe the matter alledged is out of the Realme? then by the fiction of this plea, no Demandant ſhal recover, therefore in this caſe, the Demandant ſhall reply, that hee was borne at ſuch a place in England, within the Kings leigeance, and hereupon a Jury of 12. ſhall bee charged, and if they have ſufficient evidence that he was borne in France, or in any other place out of the Realme, then ſhall they finde, that he was borne out of the Kings allegeance, & if they have ſufficient evidence that hee was borne in England, or Ireland, or Jerſey, or Jerſey, or elſewhere within the Kings obe-

20.E.3.averment.34.27. Aſſ.24.32.H.6.25.15.E.4. 15.7.H.6. 15.1.R.3.4. 6.H.7.6. 7.H.7.8. F.N.B. 196.29.Aſſ.11. 13.E.1. mord.47.12.H.3.ibid.55. Lib.7.fol.26,27.Calvins caſe. Lib.6.fol.47.Dowdales caſe.

dience,

dience, they shall find that he was borne within the kings legiance. And this hath ever bin the pleading and maner of tryall in that case. And so it is in the case that Littleton here putteth, if a man in avoidance of a fine or a discent alledge that he was out of this Realm in Spaine at the time of levying of the fine, and at the time of the disseisin & discent, the adverse party may alledge that he was at such a place in England, &c. whereupon issue shalbe taken, and then in evidence he may prove that he was out of the Realme, &c. which upon sufficient evidence the Jury ought to find. And in both these cases and the like, in a speciall verdict the Jury may find that he was borne beyond sea, or was beyond sea at that time, &c.

mẽt serroit si tiel disseisee fuit deins l'Royalm̃ al tẽps de le disseisin, ou al temps del mozant del disseisour.

presumption make continuall claime: But otherwise it should bee if the Disseisee were within the Realme at the time of the Disseisin, or at the time of the dying seised of the Disseisor.

The Statute of 25.E.3. De proditionibus doth declare, that it is Treason by the Common Law to adhere to the enemies of the King within the Realme, or without, if he be thereof provableclement attaint of overt fact, and that he shall forfeit all his lands, &c. A man must not imagine that seeing by the Common Law declared by authority of Parliament, that adhering to the Kings enemies without the Realme is high Treason, and that the Delinquent may be attainted thereof, &c. that this should want triall, for then the judgment of the Common Law, and declaration of the Parliament should be illusory, which no well-advised man will think in a matter of so great consequence. But certaine it is, that for necessity sake the adherency without the realm must be alledged in some place within England. And if upon evidence they shall find any adherency out of the realme, they shall find the Delinquent guilty. But most commonly they indited him (if he had lands) in some county where his lands did lie, that were to be forfeited, & this as appeareth in our books was the common use. And so it is declared by the Statute (*) of 35.H.8. and that it shall be tried by twelve men of the county, where the Kings Bench shall sit, & be determined before the Justices of that Bench, or else before such Commissioners, and in such shire of the Realme, as shall be assigned by the Kings Majesties Commission, and this Statute for this point remaines in force at this day, and so it was resolved (a) by all the Judges in my time, viz. in 33.Eliz. in the case of Orurke. And An. (b) 34. Eliz. in Sir John Perots case done in Ireland, for that is out of the Realme of England, and the case (c) in Mich. 19. & 20. Eliz. was utterly denied, & Sir Christopher Wray himselfe (who is supposed to give his opinion in that case) protested that he never gave any such opinion, but did hold the contrary. When part of the Act, especially the originall, is done in England, and part out of the Realme, that part that is to be performed out of the Realme, if issue be taken thereupon, shalbe tried here by 12. men, and those twelve men shall come out of the place where the writ is brought. For example (which ever doth illustrate) it was covenanted by Indenture, by Charter party, that a Ship should sayle from Blackney Haven in Norfolke, to Muttrel in Spaine, and there remaine by certaine dates.

5.R.2.triall 54.

(*) 35.H.8.cap.2. Stanford, pl.cor.90.

(a) 33 Eliz. case Orurke.
(b) 34. Eliz. case de Sir John Perots.
(c) Mich. 19. & 20. Eliz. Dier. 360.

48.E.3.3.11.H.7.16. 1.R.3.4.

In an Action of covenant brought upon this Charter party, the Indenture was alledged to be made at Thetford in the county of Norfolke, and upon pleading the Issue was joyned, whether the said Ship remained at Muttrel in Spaine by the said certaine dates. And it was adjudged, that this issue should be tried at Thetford where the action was brought, because there the contract took his originall by making of the Charter party, and so hath it been often adjudged in such like case.

Pasch.28.Eliz. in action de covenant inter Evangelist. Constantine Pl. & Hughgyn defendant in the Kings Bench. Li.6.f.47. Dowdales case. Vid.32.H.6.25. 48.E.3.3.11.H.7.16. 2.E.4.Obligation 15.

An obligation made beyond the seas may be sued here in England, in what place the Plaintife will: what then if it beare date at Burdeaux in France? where shall it be sued? And answer is made, that it may be alledged to be made In quodam loco vocat' Burdeaux in France, in Islingron in the county of Middlesex, and there it shalbe tried, for whether there be such a place in Islington or no, is not traversable in that case. These points are necessary to be knowne in respect of the variety of opinions in our bookes. And of these thus much shall suffice; and now is Littleton worthy to be heard.

Entendement de le ley.

¶ *Per entendement de le ley.* Vide, for intendement of Law, Sect.99.100.110.293. 377.393.406.367.462.463.&c.439.

Vid.Sect.269.

¶ *Ceo serr' inconvenient.* Here also, as hath been often said, appeareth, that argumentum ab inconvenienti, is strong in Law.

¶ *Autermẽt est si le disseisee fuit deins le royalm al temps del disseisin, &c.* So as if a man be disseised before he goeth over sea, or commeth into the Realme againe before the Discent, the Discent shall take away his entry.

Sect.

Sect.441.

QUa auter matter ils allegeont pur prober que devant lestatute fait en le temps de Roy E.3. An. 34. cap. 16. de son raigne, per quel estatute nonclaime est ouste, &c. le ley fuit tiel, que si un fine soit levie de certaine terres ou tenements, si alcun que fuit estrange al fine avoit droit daver et recover mesmes les terres ou tenements, sil ne venust & fist son claime a ceo deins lan & le jour procheine apres le fine levie, il serra barre a touts jours. Quia dicebat', finis finem litib'. imponebat. Et que la ley fuit tiel, il est prove per lestatute de westminster 2. De donis conditionalibus, lou il est park' que si fine soit levie de les tenements en taile, &c. Quod finis ipso jure sit nullus, nec habeant hæred', aut illi ad quos spect', reversio (licet fuerint plenæ ætat', in Anglia, & extra prisonam) necessitat' apponere clameū suum, &c. Issint ceo

ANother matter they alledge for a proofe, that before the Statute of King *Edward* the Third, made the 34. yeare of his Reigne, by which Statute Nonclaime is ousted, &c. the law was such, that if a fine were levied of certaine Lands or Tenements, if any that was a stranger to the fine had right to have and to recover the same Lands or Tenements, if he came not, and made his claime thereof within a yeare & a day next after the fine levied, he shall be barred for ever, *Quia dicebatur quod finis finem litibus imponebat.* And that law was such, it is proved by the Stat. of West. the 2. *De donis conditionalibus*, where it is spoke if the fine be levied of Tenements given in the taile, &c. *Quod finis ipso jure sit nullus, nec habeant hæredes, aut illi ad quos spectat reversio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necessit' apponere clameū suum.* So it is proved,

¶ HEre it appeareth, what the Common Law was before the said Statute, for Non-claime upon a fine levied. But now since Littleton wrote, by the Statute of 4. H. 7. five yeares after Proclamations made upon the fine are given to him that right hath to make his Claime, or pursue his Action, where the Common Law gave him but a yeare and a day. But this Statute of 4 H. 7. extends onely to fines and not to Nonclaime upon a Judgement in a writ of right, and therefore the said Statute of 34. E. 3 here cited by Littleton which ousteth Nonclaime only to fines levied, extendeth not to a judgement in a writ of right at this day, and therefore the Common Law in that case remaineth to this day, viz. that claime must bee made within a yeare and a day after judgement. Also if a fine be levied without Proclamations, or without so many as the Law requireth, then the Statute of Nonclaime doth extend to such a fine.

34. E. 3. 16. 4. H. 7. cap. 24. See as well this Statute, as the Statute of 32. H. 8. cap. 36. well expounded in my Reports. Lib. 3. fol. 44, 45. &c. case del fines per totum. lib. 1. fol. 96. 97. in Shelleyes case. lib. 2. fol. 93. Binghams case. lib. 8. fol. 100. Lechfords case. lib. 9. fol. 139, 140, 141. Beaumonds case. lib. 10. fol. 49. b. Lampets case, & 99. a. lib. 9. fol. 105. 106. Margaret Podgers case. lib. 5. fol. 124. Saffyns case. lib. 10. 96. 97. Seymors case. lib. 8. fol. 72. Grosleyes case. lib. 11. fol. 69. 71. 78. Pl. Com. in Smith & Stapl. case, & in Stowes case, & Howels case, & Glanvil. li. 13. ca. 11. Bract. 435. Fleta, lib. 6. cap. 53. Brit. 216.

¶ *Dicebatur finis, quia finem litibus imponebat.* Here you may observe the Etymologie of a fine. And herewith agreeth (a) Antiquity, Finis ideo dicitur finalis concordia, quia imponit finem litibus. And after the example (b) of Littleton it is good to search out the Etymologie or right derivation of words, for ignoratis terminis, ignoratur & ars, as hath been often observed in other places. And the Civilians call this judiciall concord, Transactionem judicialem de re immobili.

(a) Glanvil. lib. 8. cap. 3. Bract. lib. 5. fol. 435. Fleta, lib. 6. cap. 52. 53.

(b) Etymologies, &c. Vide Sect. 74. 174. 194. 441. 522. 592.

¶ *Licet*

¶ *Licet fuerit plenæ ætatis, in Anglia, & extra prisonam.* In this Act of 13.E.1. De donis conditionalibus is one omitted, who is added in the Statute De modo levandi fines, viz. & sanæ memoriæ. (c) But a Feme-Covert had no privsledge of non-claime at the Common Law, as some have said, because shee had a husband that might make claime for her. But yet Bracton saith; Item excusatur uxor quæ sub potestate viri suppolita quod clameum non apposuerit licet mittere posit. And citeth a judgment in the point, Trin. 4. H. 3. in Cusins case. But Fleta saith, Excusatur si fuerit uxor alicujus, si fuerit per virum impedita, quod non potuit apponere clameum. Also they in reversion or remainder expectant upon any estate of Freehold were barred by the Common Law, and yet they would make no claime, because, as hath been said, it belonged to the particular tenant, and not to them, because their entry was not lawfull; which was one of the principall causes of making of the said Statute of 34 E. 3. which ousted Non claime. But these cases of Coverture, and of them in reversion and remainder, are now without question holpen, and just provision made for the saving of their rights and titles, by the said Statute of 4. H. 7. as by the said act appeareth.

Stat. de anno. 18. E. 1.

(c) Pl. Com. Stowels case, 359.

Bracton, lib. 5. fol 436. Britton, fol. 216. b. Fleta, lib. 6. ca. 53.

prove, que si un estrange home que avoit droit a les tenements, sil fuit hors de Royalme al temps del fine levie, &c. nul dammage, coment q̄ il ne fist son claime, &c. coment que tiel fine fuit matter de record. Per greinder reason il semble a eux que un disseisin & discent q̄ est matter en fait, ne issint trope greevera celuy q̄ fuit disseisie, quant il fuit hors du Royalme al temps de disseisin, & auxy al temps que le disseisor morust seisie, &c. mes que il bien poit enter, nient contristeant tiel discent.

that if a stranger that hath right unto the tenements, if hee were out of the Realme at the time of the fine levied, &c. shall have no dammage, though that hee made not his claim, &c. though that such fine was matter of record: by greater reason it seemeth unto them that a Disseisin & discent that is matter indeed shall not so grieve him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the disseisor dyed seised, &c. but that he may well enter notwithstanding such discent.

Sect. 442.

CArraigne un assise. To arraigne the Assise is to cause the Tenant to bee called to make the plaint, and to set the cause in such order as the Tenant may bee enforced to answer thereunto; and is derived of the French word Arraigner, which signifieth to order or set in right place. An Arraignment is sometime called an Attention of the Verbe Astituo, compounded of Ad and Statuo, that is, to place, or set in order one by another. In the same sense that Littleton here useth it, it is used when an appeale is

CItem, Quære si home soit disseisi, & il arraigne un Assise envers le disseisor, & les recognitors de le assise chaūta pur le plaintife, & les Justices dassise voyle estre advises de lour judgment, tanq̄ al prochein assise, &c. Et en le dementiers le disseisor morust seisie, &c. si le dit fuit

ALso inquire if a man be disseised, and hee arraigne an assise against the disseisor, and the recognitors of the assise chante for the Plaintife, and the Justices of assise will bee advised of their judgements untill the next assise, &c. and in the meane season the disseisor dieth seised, &c. yet the

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del assise serra pris en ley pur le dit disseisee un continual claime, entant que nul default fuit en luy, &c.

said suit of the assise shall be taken in Law for the disseisee a continuall claime, insomuch that no default was in him, &c.

arraigned, both which are arraigned in French, but entred in Latine. And it is to bee observed, that Littleton saith here Arraigne un assise, and saith not that the Tenant is arraigned, and so of the appeale, for these are the suits of the subject, and no man is said to be arraigned, but meerly at the suit of the King, upon an Enditement found against him, or other record wherewith he is charged. And there the arraignment of the prisoner is to take order, that he appeare, and for the certainty of the person to hold up his hand, and to plead a sufficient plea to the enditement or other record, whereupon they which follow for the King may orderly proceed.

2. & 3.E.6.c.24.towards the end. Stanf.pl.cor. 105.C.3.H.7.ca.1.

¶ *Justices dassise.* Justices of Assise are assigned and constituted by the King, of the Judges and Sages of the Law, and are called Justices of Assise, for that the writs of Assise of Novel disseisin, (which in former times were accounted Festina remedia, and very frequent and common) were returnable before them to be taken in their proper Counties twice every yeare at the least, whereupon they had authority to give judgement, and award seisin and execution: and therefore both for the number of them in times past, & for the greater authority they had then as Justices of Nisi prius (which was to try issues only, except in Quare impedit, and Assises De darreine presentment, in which cases the Justices of Nisi prius might give judgment) they were denominated Justices of Assises: And divers Acts of Parliament have given to them great authority both in Criminall causes and Common pleas. These Justices of Assise, have also Commissions of Oier and Terminer, of Gaole delivery and of the peace, of association, and Si non omnes throughout their whole circuits, so as they are armed with ample, provident, but yet ordinary jurisdiction; for all their Commissions are bounded with this expresse limitation, Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ. And in former time according to the originall institution and their Commission, both the Justices joyned both in Common pleas, and pleas of the Crowne.

Vid.Sect.514.233, 234. Magna Charta,30. W.2.ca.3.30.39. Stat.de Ebor.ca.3,4. Artic.Sup.Cart.ca.10. 4.E.3.ca.11.7.R.2.ca. 27.E.1. De finibus ca.4. 28.E.1.de appellatis. 4.E.3.ca.2. 2.H.5.ca.8. 3.H.5.ca.7. 13.H.4.ca.7. North.2.E.3.ca.3. 2.E.3.ca.5.14.H.6.ca.1. 21.H.6.ca.10. 3.H.7.ca.1. 33.H.8.c.9. 34.& 35.H.8. ca.14.2.& 3.E.6.ca.24. 1.E.6.ca.7. 2.Mar.Dier. 99.3.& 4.Eliz.Dier.205.

¶ *Si le dit suit del assise, serra prise en ley, &c. un continual claime.* And it is holden at this day that it shall amount to a Claim, for that there was no default in him as Littleton saith. (d) Some have objected that if the bringing of an Assise should amount to Continuall Claime, and every Continuall claime made by the Disseisee vest the possession of freehold in him, therefore if bringing the Assise, &c. should amount to a Continuall claime, that then the writ should abate. But hereunto it hath been answered in this Chapter, that a Continuall claime is an entry by construction of Law for the advantage of the Disseisee, but not for his disadvantage.

(d) See before in this chapter, Sect.419. Vid. Sect.416.

In a writ of entry Sur Disseisin against one, supposing that he had not entred but by S. who disseised him, the Tenant said that S. dyed seised, and the land descended to him, and prayed his age; the Plaintiffe counterpleaded his age, for that he arraigned an Assise against S. who dyed hanging the Assise, and he was ousted of his age, for that the bringing of the Assise amounted to a Claime.

24.E.3.25. 9.E.2.age 141. 15.E.3. Counterplea de gar.5.

If Tenant in Dower alien in fee with warranty, and the Heire in the reversion bring a writ of entry In casu proviso, &c. and hanging the plea the Tenant dieth, the Heire shall not be rebutted or barred by this warranty, for that the Præcipe did amount to a Continuall claime. And herewith agreeth (*) Antiquity; Et si clameum non opposuerit, sufficit tamen si ille vel Antecessor suus faciat quod tantundem valeat, ut si placit' movetit tenen' vel fecerit rem litigiosam; quia sicut plus est facto appellare, quàm verbo, ita plus est clameum apponere facto, quàm verbo: Et ad hoc facit de Termino Sanctæ Trinitatis, Anno regni regis, H.3.15. in com. Hunt: de quadam Guldeburga, cui objectum fuit, quod clameum non apposuit, & ipsa respondit, quod fecit, quod tantundem valet, quia tempore finis facti implacitavit tenentem per aliud breve, &c.

3.E.3.tit.garrantie 62.

(*) Fleta, lib.6.ca.52. Bract.lib.5.fol.436.

If the goods of a Villeine (before any seisure made by the Lord) bee distreined, the Lord may have a Replevin, and notwithstanding before the bringing of the writ hee had no property, yet the very bringing of the writ doth amount to a claime of the goods, and vesteth the property in the Lord.

33.E.3.Replevin 43. 42.E.3.18.b. 9.H.6.25.

¶ *Entant que nul default fuit en luy, &c.* Hereby it is implyed, that our Author inclined to this opinion, that it should amount to a Claime, for that no default was in him, Et nemo debet rem suam sine facto aut defectu suo amittere, as the rule is.

Reg:

Sect.

Sect. 443.

THere first it is to bee obserued, that albeit the Freehold and inheritance is in this case in no person, but in abeiance or in consideration of Law, yet an entry and claime by one that hath no right shall gaine the inheritance by wrong. For here Littleton saith, and of such estate dyed seised, &c. And so it is in case of a Bishop, Parson, Vicar, Prebend, or any other sole Corporation. And in the statute of Merlebridge it is called an Intrusion.

Merleb.cap.28.

Secondly, that seeing by the death of the Abbot (which is the act of God) no person is able to make Continuall Claime, therefore a Discent during that time shall not prejudice the Successor, for as hath been said, Impotentia excusat Legem. If an usurpation be had to a Church in time of vacation, this shall not prejudice the Successor, to put him out of possession, but that at the next avoidance hee shall present.

F.N.B.34.m-W.2.cap.5. 1.434

¶ *Nient pluis que ils sont able de suer Action, &c.* Here that which hath in this Chapter been said is confirmed, viz. That the Entry or Continuall Claime must pursue the action.

¶ *Car le Covent nest forsque un mort person, &c.* This is Ratio una, but not unica: for though the rest of the Corporation be no more persons, as the Chapter in case of Deane and Chapter, or the Commonalty in case of Maior and Commonalty; yet cannot they when there is no Deane or Maior make claim, because they have neither ability nor capacity, to take or to sue any Action, as our Author here saith.

¶ *Car en temps de*

¶ ITem, Quære si un Abbe de un Monasterie mourust, & durant le temps de vacation, un hõe tortiousemẽt enter ẽ certaine parcel de terre del Monastery, claymant la terre a luy & a ses heires, & de tiel estate mourust seisie, & la terre discendist a son heir, & puis apres un est elect et fait Abbe de mesme la Monasterie, si mesm Labbe poit enter sur le heire ou ne-my. Et il semble a ascuns que Labbe bien poit enter en ceo cas, pur ceo q̃ le Covent en temps de vacãt ne fuit ascun person able de faire Continual Claime, car nient pluis que ils sont person ablé õ suer Action, nient pluis ils sont able de faire Continual Claime, car le Covent nest forsque un mort corps sans Teste, car en temps de Vacation un graunt fait a eux, ou per eux est void, & en cest case Labbe ne poit aver Briefe Dentre sur Disseisin envers

ALso inquire if an Abbot of a Monastery dye, & during the time of vacation, a man wrongfully entreth in certain parcels of land of the Monastery claiming the land unto him and his heires, and of that estate dieth seised, and the Land descendeth unto his Heires, and after that an Abbot is chosen, and made Abbot of the Monastery, a question is, if the Abbot may enter upon the Heire or not. And it seemeth to some, That the Abbot may well enter in this case, for this that the Covent in time of vacation was no person able to make continuall claime, for no more thã they be personable to sue an Action, no more bee they able to make Continuall Claime, for the Covent is but a dead body without Head, for in time of vacation a Grant made unto thé is void, and in this case an Abbot may not have a Writ of *Entrie* upon *Disseisin*, against the Heire, for

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le heire, pur ceo que il ne fuit unques diſſeiſie, & ſi Labbe ne puiſſoit enter en ceo caſe, donques il ſerra miſs a ſon Briefe de Droit, &c. le quel ſerra trope dure pur le meaſon, per que ſẽble a eux, que Labbe bien poit enter, &c.

this, That hee was never diſſeiſed. And if the Abbot may not enter in this caſe, then hee ſhall bee put unto his Writ of Right, &c. which ſhall bee hard for the Houſe. By which it ſeemeth to them, that the Abbot may well enter, &c.

Quæras de dubiis, legẽ bene diſcere ſi vis:
Quærere dat ſapere, quę ſunt legitima vere.

Quæras de dubiis, legem bene diſcere ſi vis:
Quærere dat ſapere, quæ ſunt legitima vere.

vacation un Graunt fait a eux ou per eux, eſt void, &c. And the reaſon is, becauſe the body politique, which is capable, is not complete, but wanteth the Head. But this is to be underſtood of an immediate Grant, for if during the vacation of the Abathy of Dale, a Leaſe for life, or a gift in Taile be made, the remainder to the Abbot of Dale and his Succeſſors, this remainder is good, if there bee an Abbot made during the particular eſtate. 2.H.7.13. 40.Aſſ.26. 34.E.3.Garrantie 69.

If there bee Mayor & Commonalty of D. and the Mayor dieth, a Grant made to the Maior & Commonalty of D. is void for the cauſe aforeſaid, but in that caſe if a Leaſe for life be made, the remainder to the Mayor and Commonalty of D. the remainder is good, if there be a Mayor elected during the particular eſtate.

¶ *Poit enter, &c.* Here by this (&c.) is implyed, Or make his Continuall Claime in ſuch ſort as hath bin before expreſſed.

¶ Quæras de dubiis, Legem bene diſcere ſi vis:
Quærere dat ſapere, quæ ſunt legitima vere.

Here Littleton expreſſeth an excellent meanes to attaine to the reaſon of the Law, by enquiting of, and conference had with learned men, of doubtfull caſes.

Inter cuncta leges, & percunctabere Doctos. Horace.

For as Collatio peperit artes, ſo Collatio perficit artes: And this muſt bee continuall, for as knowledge increaſeth, ſo doubts therewith increaſe alſo; Creſcente ſcientia, creſcunt ſimul & dubitationes.

And here Littleton citeth very aptly two Verſes, for it is truly ſaid, That Authoritates Philoſophorum, Medicorum & Poetarum ſunt in cauſis allegandæ & tenendæ: And our Author doth not cite a Verſe for memory, but it is worthy of memory.

CHAP. 8. Of Releaſes. Sect. 444.

RElease ſont en divers mãers, ceſtaſcavoir, Releaſes de tout le Droit que home ad en terres ou Tenements, & Releaſes de Actions perſonals & reals, &

RElease are in divers manners, s. Releaſes of all the right w^ch a man hath in lãds, or teneméts, & releaſes of Actions perſonals & reals, & other things.

HEre our Author beginneth with a diviſion of Releaſes. Vide Mir.cap.2.§.17. Vide Britton. Bract.li.5. Tract.de Except. & Lib.4.fol.318.b. Fleta, lib. ca.14.

Theſe words muſt be referred thus: Releaſes are of two ſorts, viz. A Releaſe of all the right which a man hath either in Lands and Tenements, or in Goods and Chattels: or there is a Releaſe of Actions Reall, of or in Lands or Tenements: or Perſonall, of or in

Vide Sect.492.

in Goods or Chattels: or mixt, partly in the Realty, and partly in the Personalty.

¶ *Release.* Relaxatio: Of the Etymology of this word you have heard before.

(a) Fleta, ubi sup.

Fleta (a) calleth it, Charta de quieta clamantia.

¶ Noverint universi per præsentes, &c. Here Littleton sheweth Presidents of Releases of right: and Presidents doe both teach and illustrate, & therefore our Student is to be well stored with Presidents of all kindes.

Bract.lib.4.fol.308. Fleta,ubi sup. 9.H.6.35. 24.E.3.27. 13.H.4.Entr.congeab.57.

¶ Remisisse, relaxasse, & quietum clamasse. Here Littleton sheweth, That there be three proper words of Release, and bee much of one effect: besides, there is Renunciare, Acquietare, and there bee many other words of Release: as if the Lessor grants to the Lessee for life, that hee shall be discharged of the Rent, this is a good Release, Vide Sect.532.

And it is bee understood, That there bee Releases in Deed, or Expresse Releases, whereof Littleton here hath shewed an example. These Expresse Releases must of necessity be by Deed. There be also Releases in Law, and they are sometime by Deed, and sometime without Deed. As if the Lord disseise the Tenant, and maketh a Feoffment in Fee by Deed or without Deed, this is a release of the Seigniory. And so it is, if the Disseisee disseise the heire of the Disseisor, and make a Feoffment in Fee by Deed or without Deed, this is a Release in Law of the right. And the same Law it is of a right in Action.

27.H.8.29.of an use. 34.H.6.44.of an attaint. 3.E.3.38. 21.E.4.81.Pl. Com.Dalameres case.

v. Plowd. f. 175.

8.E.4.3. 21.E.4.2.

If the Obligee make the Obligor his Executor, this is a release in Law of the Action, but the duty remaines, for the which the Executor may retaine so much goods of the Testator.

11.H.7.4. 20.H.7.29. 8.E.4.3.

If the Feme Obligee take the Obligor to Husband, this is a release in Law. The like Law is, if there be two Femes Obligees, and the one take the Debtor to Husband.

If an Infant of the age of seventeen yeares release a Debt, this is voide. But if an Infant make the Debtor his Executor, this is a good release in Law of the Action.

But if a Feme Executrix take the Debtor to Husband, this is no release in Law, for that should be a wrong to the Dead, and in Law worke a Devastavit, which an Act in Law shall never worke. And so it was adjudged in the Kings Bench, Mich 30.& 31.Eliz. in which case I was of Councell. *v. Rep. 8. fo: 136. f. John Godhams case.*

30.E.3.24. 32.E.3.Tit. Scire fac.102.

But it is to be observed, That there is a diversity between a release in Deed, and a release in Law: for if the heire of the Disseisor make a lease for life, & the Disseisee release his right to the Lessee for his life, his right is gone for ever. But if the Disseisee doth disseise the heire of the Disseisor, and make a Lease for life, by this release, in Law the right is released but during the life of the Lessee: for a release in Law shalbe expounded more favourable, according to the intent & meaning of the parties, than a release in Deed, which is the act of the party, and shall

Releases de tout le droit que homes ont en Terres ou Tenements, &c. sont communement fait en tiel form ou d tiel effect.

Releases of all the right which men have in Lands and Tenements, &c. are commonly made in this form, or of this effect.

*Sect.*445.

¶ Noverint universi per præsentes me A. de B. remisisse, relaxasse, & omninò de me & hæredibus meis quietum clamasse: *vel sic*, Pro me & hæredibus meis quietum clamasse C. de D. totum jus, titulum, & clameum quæ habui, habeo, vel quoviſmodo in futur. habere potero, de & in uno messuagio cum pertinentiis in F. &c. Et est a scavoire, que ceux Verbs, Remisisse, & quietũ clamasse, sont de un tiel effect, sicome tiels Verbs, Relaxasse.

Know all men by these Presents, That I A. of B. have remised, released, and altogether from me and my Heires quiet claimed: or thus, *For mee and my Heires quiet claimed to C. of D. all the right, title, and claim which I have, or by any meanes may have, of & in one messuage, with the appurtenances in F. &c.* And it is to be understood, that these words, *Remisisse & quietum clamasse*, are of the same effect as these words, *Relaxasse.*

ſhall be taken moſt ſtrongly againſt himſelfe, and ſo in the caſe aforeſaid, where the Debtor is made Executor.

¶ Iorum jus, titulum, & clameum. But note, that Jus or right in generall ſignification includeth not only a right for the which a Writ of right doth lye, but alſo any title or claime either by force of a Condition, Mortmaine, or the like, for the which no action is given by Law, but only an entry.

Sect. 446.

ITem, ceux parolx q̄ ſont communement mis en tielx faits de releaſes, &c. (quæ quoviſmodo in futurum habere potero) ſont ſicome voides en le ley, car nul droit paſſa per un releas, forſq̄ le droit que le releſſor ad al temps de le releas fait. Car ſi ſoit pier & fits, & le pier ſoit diſſeiſee, & le fits (vivant ſon pier) releſſa per ſon fait a le diſſeiſor, tout le droit que il ad, ou aver puiſſoit, en meſmes les tenemēts ſans clauſe de garrantie, &c. et puis le pier mozuſt, &c. le fits poit loyalment enter ſur la poſſeſſion le diſſeiſor, pur ceo que il navoit droit en la terre en la vie ſon pier, mes le droit diſcendiſt a luy per diſcent apres le releas fait, p̄ le mort ſon pere, &c.

ALſo theſe words which are commonly put in ſuch Releaſes, s. (*quæ quoviſmodo in futurum habere potero*) are as voide in Law, for no right paſſeth by a Releaſe, but the right which the Releaſor hath at the time of the Releaſe made. For if there be Father and Sonne, and the Father bee diſſeiſed, and the Sonne (living his Father) releaſeth by his deed to the diſſeiſor, all the right which he hath, or may have, in the ſame tenements without clauſe of warranty, &c. and after the Father dyeth, &c. the Sonne may lawfully enter upon the poſſeſſion of the Diſſeiſor, for that hee had no right in the land in his fathers life, but the right deſcended to him after the Releaſe made, by the death of his Father, &c.

¶ NOte, a man may have a preſent right, though it cannot take effect in poſſeſſion, but in futuro.

As hee that hath a right to a reverſion or remainder, and ſuch a right he that hath it, may preſently releaſe: But here in the caſe which Littleton puts where the Sonne releaſe in the life of his father, this releaſe is void (a) becauſe hee hath no right at all at the time of the releaſe made, but all the right was at that time in the Father, but after the deceaſe of the Father, the ſon ſhall enter into the Land, againſt his owne Releaſe.

(a) Britton, fol. 101. 17.E.3.67. 42.E.2.28. 10.H.6.4. 25.Aſſ.7. 27.E.3.execution 130.

The Baron make a Leaſe for life and dieth, the Releaſe made by the wife of her Dower to him in reverſion is good, albeit ſhe hath no cauſe of Action againſt him in præſenti. 16.E.3.barre 245. Hoes caſe 5.part.f.70,71.

¶ *Sans clauſe de garrantie.* For if there bee a warranty annexed to the Releaſe, then the Son ſhall be barred. For albeit the Releaſe cannot barre the right for the cauſe aforeſaid, yet the warranty may rebut, and barre him, and his heires of a future right which was not in him at that time: and the reaſon (which in all caſes is to be ſought out) wherefore a warranty being a Covenant reall ſhould barre a future right, is for avoiding of circuity of action (which is not favoured in Law,) as he that made the warranty ſhould recover the Land againſt the Ter-Tenant, and he by force of the warranty to have as much in value againſt the ſame perſon: yet is there a diverſity between a warranty & a Feoffment, (b) for if there bee Grandfather, Father, and Son, and the Father diſſeiſeth the Grandfather, and make a feoffment in 20.H.6.29.

(b) 39.H.6.43. 21.E.4.8. 15.E.4.tit.entr.cong.24. 9.H.7.1.b. 2.E.3.38.

10.E.2. confirmation 24. 8.E.2.garr 62. 11.H.4.33. 43.E.3.17.42.E.3.24.per Finchden.17.E.3.67. Lib.1.fol.112,113.in Albanies case.

in fee, the Grandfather dieth, the Father against his owne feoffment shall not enter, but if he die, his son shall enter, and so note a diversity between a Release, a Feoffment, and a warranty: a Release in that case is void; a feoffment is good against the feoffor, but not against his heire; a warranty is good both against himselfe and his heires.

And here are three diversities worthy of observation, viz. First, betweene a Power or an Authority, and a Right. Secondly, between Powers and Authorities themselves. Thirdly, between a Right and a Possibility.

As to the first, if a Man by his last will deviseth that his Executors shall sell his Land, and dyeth, if the Executors release all their right and title in the land to the Heire, this is void, for that they have neither right nor title to the land, but only a bare Authority, which is not within Littletons case of a Release of a right. And so it is if cesty que use had devised that his feoffees should have sold the land. Albeit they had made a feoffment over, yet might they sell the use, for their Authority in that case is not given away by the Livery.

15.H.7.11

As to the second, there is a diversity between such Powers or Authorities as are onely to the use of a stranger, and nothing for the benefit of him that made the release (as in the case before) & a Power or Authority which respecteth the benefit of the Releasor, as in these usuall powers of revocation, when the feoffor, &c. hath a power to alter, change, determine, or revoke the uses (being intended for his benefit) he may release, & where the estates before were defeasible, he may by his release make them absolute, and seclude himselfe from any alteration or revocation, as it hath bin resolved, which diversity you may reade in (m) Albanies case.

(m) Lib.1.Albanies case, ubi supra. Lib.5.Hoes case,70,71. 10.H.6.4.

As to the third, before Judgement the Plaintife in an Action of debt releaseth to the baile in the Kings Bench all demands, and after Judgement is given, this shall not barre the Plaintife to have Execution against the baile, because at the time of the release he had but a meere possibility, and neither Jus in re, nor Jus ad rem, but the duty is to commence after upon a contingent, & therefore could not be released presently. So if the Conusee of a Statute, &c. release to the Conusor all his right in the land, yet afterwards he may sue Execution, for he hath no right in the land till Execution, but only a possibility, and so have I knowne it adjudged.

25.Ass.p.7. 27.E.3.execution 130.pasch.38. Eliz.Rot.521. inter Borough & Gray.

Sect.447.

49.E.3.28.

¶ *De tout le droit.* This must bee intended of a bare right, and not of a release of right, wherby any estate passeth, as to a Lessee for yeares &c. as shall bee said hereafter. Also it must bee intended of a Release of a right of freehold at the least, & not to a right for any terme for yeares or chattle reall, as if Lessee for yeares be ousted, and hee in the reversion dissessed, and the Disseisor maketh a Lease for years, the first Lessee may release unto him. All which is implyed in the first, &c. Also in some case a release of a right made to one that hath neither freehold in Deed, nor freehold in Law, is good and available in Law, (c) as the Demandant may release to the vouchee, and yet the vouchee hath nothing in the land, but the reason of that is, for that when the vouchee entreth into the warranty, he becommeth tenant to the Demandant, and may render the Land to him, in respect of the privity, but an estranger cannot release to the vouchee, because In rei veritate, he is not tenant of the land.

(c) 7.E.4.13. 20.H.6.29. 5.H.7.41. 18.E.3.12. 8.H.4.5. 5.E.3.36. 5.E.3.46. Vid.Sect.490,491.

¶ Item en releases de tout le droit que home ad ẽ certein terres, &c. il covient a celuy a q̃ le releas est fait en ascun cas, que il ad l' franktenemẽt en les terres en fait, ou en ley, al temps de releas fait, &c. car en chescun cas lou celuy a que l' releas est fait ad franktenemẽt en fait, ou franktenement en ley, al temps del releas, &c. donque le releas est bone.

Also in Releases of all the right which a man hath in certaine Lands, &c. it behooveth him to whom the Release is made in any case that hee hath the freehold in the Lands, in Deed, or in Law at the time of the Release made, &c. for in every case where he to whom the Release is made hath the freehold in Deed or in Law at the time of the Release, &c. there the Release is good.

(d) And

(d) And so it is if the Tenant alien hanging the Præcipe, the release of the Demandant to the Tenant to the Præcipe is good, and yet he hath nothing in the land. *I. 490.* (d) 10.E.4 14. 12.Ass.p.41.

In time of vacation an Annuity, that the person ought to pay, may be released to the Patron in respect of the privity, but a release to the Ordinary only seemeth not good, because the Annuity is temporall. 8.E.3.21.46.E.3.6.b. 8.H.6 23. 21.H.7.41.

If a Disseisor make a Lease for life, the Disseisee may release to him, for to such a Release of a bare right there needs no privity, as shall be said hereafter. But if the Disseisor make a Lease for yeares, the Disseisee cannot release to him, because hee hath no estate of Freehold. And yet in some case a right of Freehold shall drowne in a chattell, as if a Feme hath a right of Dower, she may release to the Gardein in Chivalry, and her right of Freehold shall drown in the chattle, because the Writ of Dower doth lye against him, & the heire shall take advantage of it. And it is to be observed, that by the ancient maxime of the Common Law, a Right of entry, or a Chose in action cannot be granted or transferred to a stranger, and thereby to avoided great oppression, injury, and injustice. Nul charter, nul vende, ne nul done vault perpetualment si le donor nest seisie al temps de contracts de 2. droits, s. del droit de possession, & del droit del propertie. And therefore well saith Littleton, that he to whom a release of a right is made must have a Freehold. a popishly max: Mirror, cap.2. Sect.17. (a) they cant be granted by act of y^e party so droit in action shall not be transferred by Statute in Law as to y^e Grantee Rep. 10. fol. 48.

For the better understanding of transferring of naked rights to lands or tenements, either by Release, Feoffment, or otherwise, it is to be knowne, that there is Jus proprietatis, a right of ownership, Jus possessionis, a right of seisin or possession, and Jus proprietatis & possessionis, a right both of property and possession: and this is anciently called Jus duplicatum, or Droit droit. For example, if a man be disseised of an acre of land, the Disseisee hath Jus proprietatis, the Disseisor hath Jus possessionis, and if the Disseisee release to the Disseisor, he hath Jus proprietatis & possessionis. And regularly, it holdeth true, that when a naked right to land is released to one that hath Jus possessionis, and another by a meane title recover the land from him, the right of possession shall draw the naked right with it, and shall not leave a right in him to whom the Release is made. For example, if the heire of the Disseisor being in by discent, A. doth disseise him, the Disseisee release to A. now hath A. the meere right to the land. But if the heire of the Disseisor enter into the land, and regaine the possession, that shall draw with it the meere right to the land, and shall not regaine the possession only, & leave the meere right in A. but by the recontinuance of the possession, the meere right is therewith vested in the heire of the Disseisor. Mirror, ubi supra. Bracton, lib.2.fol.32. Britton, fol.89.a.21. Bracton, lib.5.fol.172. Reg:

But if the Donee in taile discontinue in fee, now is the reversion of the Donor turned to a naked right, if the Donor release to the Discontinuee & die, and the issue in taile doth recover the land against the Discontinuee, he shall leave the reversion in the Discontinuee, for the issue in taile can recover but the estate taile only, & by consequence must leave the reversion in the Discontinuee, for the Donor cannot have it against his release: but if the Disseisee enter upon the heire of the Disseisor, and infeoffe A. in fee, and the heire of the Disseisor recover the whole estate, that shall draw with it the meere right, and leave nothing in the Feoffee. Note the diversity. Another diversity is observable when the naked right is precedent before the acquisition of the defeasible estate, for there the recontinuance of the defeasible estate shall not draw with it the preceding right. (c) As if the Disseisee disseise the heire of the Disseisor, albeit the heire recover the land against the Disseisee, yet shall hee leave the preceding right in the Disseisee. So if a woman that hath right of Dower disseise the heire, and he recover the land against her, yet shall he leave the right of Dower in her. (c) 5.Ass.1.10.Ass.16. 50.E.3.7.4.E.3 Estopp. 133. 30.Ass 5.11.E.3.Entrie 56. 12.Ass.41. 27.E.3.84.88.

Another diversity is to be noted, when the meere right is subsequent, and transferred by act in Law, there albeit the possession be recontinued, yet that shall not draw the naked right with it, but shall leave it in him; as if the heire of the Disseisor be disseised, & the Disseisor infeoffe the heire apparent of the Disseisee being of full age, and then the Disseisee dieth, & the naked right descend to him, and the heire of the Disseisor recover the land against him, yet doth he leave the naked right in the heire of the Disseisee. So if the discontinuee of tenant in taile infeoffe the issue in taile of full age, and tenant in taile dye, and then the discontinuee recover the land against him, yet he leeveth the naked right in the issue. (c) But if the heire of the Disseisor be disseised, and the Disseisee release to the Disseisor upon condition, if the condition be broken, it shall revest the naked right. And so if the Disseisee had entred upon the heire of the Disseisor, and made a feoffment in fee, upon condition, if he entred for the condition broken, and the heire of the Disseisor entred upon him, the naked right should bee left in the Disseisee. But if the heire of the disseisor had entred before the condition broken, then the right of the Disseisee had bin gone for ever. But now let us heare what Littleton saith. 23.H.8.tit.Restore al action Pr.5. 50.E.3.7.Vid. Sect.473. 475.478.487. (c) 38.E.3.16. 9.H.7.24.

Sect. 448.

HEre Littleton deſcribeth what a Freehold in Law is, for he had ſpoken before in many places of freeholds in Deed. This Bracton calleth (a) Civilem & naturalem poſſeſsionem ſeu ſeiſinam. The naturall ſeiſin is the freehold in Deed, and the Civill the Freehold in Law.

(a) Bract.li.4. f.206.236. Britton,fol.83.b. Fleta,lib.3.cap.15. Vide Sect.680.

If a man levie a fine to a man, Sur conuſance de droit come ceo que il ad de ſon done, or a Fine Sur conuſance de droit tantum: Theſe bee feoffments of Record, and the Conuſee hath a Freehold in Law in him before he entreth.

42.E.2.22. 10.H.6.14. 17.E.3.78. 2.E.3.33.

Upon an exchange the parties have neither freehold in Deed, nor in Law before they enter, ſo upon a partition the freehold is not removed untill an entry.

11.H.4.61. 21.H.7.12.

(g) If Tenant for life by the agreement of him in the reverſion ſurrender unto him; he in the reverſion hath a freehold in Law in him before he enter. (h) Upon a livery within the view no freehold is veſted before an entry.

(g) 32.E.3.barre 262. 41.Aſſ.2.13.H.4. ſurrender 10.

(h) 38.E.3.12.

If a man doth bargaine and ſell land by Deed indented and inrolled, the freehold in Law doth paſſe preſently. And ſo when uſes are raiſed by Covenant upon good conſideration.

If a Tenant in a Præcipe being ſeiſed of lands in fee, confeſſe himſelfe to be a Villeine to an eſtranger, and to hold the land in Villenage of him, the eſtranger by this acknowledgement is actually ſeiſed of the freehold and inheritance without any entry. But let us returne to Littleton.

17.E.3.77. 18.E.4.25.

CFRanktenement en ley eſt, ſicome un home diſſeiſit un auter, & moruſt ſeiſie, per q̄ les tenements diſcendōt a ſon fits, coment q̄ ſon fits ne entra pas ē les tenements, uncor̄ il ad un franktēt en ley, quel per force de diſcent eſt ject ſur luy, & pur ceo un releas fait a luy, iſſint eſteant ſeiſie de frāktenement en ley, eſt aſſets bon, & ſil pr̄et feme iſſint eſteant ſeiſie en ley, coment que il ne unque enter pas en fait, & moruſt ſon feme ſerra endow.

FReehold in Law is, as if a man diſſeiſeth another & dyeth ſeiſed, whereby the tenements deſcend to his ſon, albeit that his ſonne doth not enter into the teneméts, yet hee hath a freehold in law, which by force of the diſent is caſt upon him, and therefore a releaſe made to him ſo being ſeiſed of a freehold in Law is good enough; and if hee taketh wife being ſo ſeiſed in law, although hee never enter in deed, and dieth, his wife ſhall bee endowed.

Sect.449.

CItem, en aſcuns caſes de releales de tout le droit, coment que celuy a que le releale eſt fait nad riens en le franktenement en fait, ne en ley, uncore le releale eſt aſſets bone. Sicom̄ le diſſeiſor leſſa la terre que il ad per diſſeiſin a un auter pur terme de ſa vie, ſavant le reverſion a luy, ſi le diſſeiſee ou ſon heire releſſa al diſſeiſor tout le droit, &c.

ALſo in ſome caſes of releaſes of all the right, albeit that he to whom the releaſe is made hath nothing in the Freehold in Deed nor in Law, yet the releaſe is good enough. As if the diſſeiſor letteth the land which hee hath by diſſeiſin to another for term of his life, ſaving the reverſion to him, if the diſſeiſee or his heire releaſe to the diſſeiſor all the right, &c. this

cel

cel releasse est bone, pur ceo que celuy a que le releasse est fait avoit en luy un reversion al temps del releasse fait.

releasse is good, because hee to whom the releasse is made had in law a reversion at the time of the releasse made.

¶ HEre Littleton addeth a limitation to the next precedent Section, viz. that a Releasse of all the right may be good to him in reversion, albeit he hath nothing in the Freehold, because he hath an estate in him. 7.E.4.13. 14.H.4.32.8. 41.E.3.17. 49.E.3.28. Case ult.

¶ *Tout le droit, &c.* Or Title, Interest, Demand, or the like, and so it is, if he in the reversion hath an estate for life or in taile in reversion, as in the like case it appeareth in the next Section.

Sect. 450.

¶ EN meisme le maner est, lou leas est fait a un home pur terme de vie, le remainder a un auter pur terme de auter vie, le remainder a le tierce en le taile, le remainder a le quart en fee, si un estranger que droit ad a la terre, releissa tout son droit a ascun de eux en l' remainder, tiel releasse est bone, pur ceo que chescun de eux ad un remainder en fait vestue en luy.

IN the same manner it is, where a Leasse is made to a man for terme of life, the remainder to another for term of another mans life, the remainder to the third in taile, the remainder to the fourth in fee, if a stranger which hath right to the Land releaseth all his right to any of them in the remainder, such releasse is good, because every of them hath a remainder in Deed vested in him.

¶ HEre is another limitation, that a Releasse is good to him in the remainder, albeit he hath nothing in the Freehold in possession, because he hath an estate in him, as hath been said. In both these limitations it is to be observed, that the state which maketh a man Tenant to the Præcipe, is said to be the Freehold, as here the state of Tenant for life, and not the reversion in fee. 7.E.4.13. 41.E.3.19. 7.E.3.54. 18.E.2.Tit. Entrie 74. 3.E.2.Tit. Entrie 7. F.N.B. 207.E.

Sect.451.

¶ MES si le tenant a terme de vie soit disseisie, & puis celuy q̄ ad droit (esteant le possession en l' Disseisor) releissa a un de eux a que le remainder fuit fait tout son droit, cel releasse est void pur ceo que il n'avoit un remainder en fait al temps de releasse fait, forsq̄ tantsolement un droit del remainder.

BUt if the Tenant for terme of life be disseised, & afterwards hee that hath right (the possession being in the Disseisor) releaseth to one of them to whom the remainder was made all his right, this releasse is void, because hee had not a remainder in Deed at the time of the releasse made, but onely a right of a remainder.

¶ *Forsque tantsolement un droit del remainder.* For a Releasse of a right to one that hath but a bare right regularly is voide; for as Littleton hath before said, hee to whom a Releasse is made of a bare right in Lands and Tenements must have either a Freehold in Deed or in Law in possession, or a state in remainder or reversion in fee or fee taile, or for life. Vide Sect.454.

Reg:

Sect. 452.

BY this it appeareth, That as a Release made of a right to him in reversion or remainder, shall aide and benefit him that hath the particular estate for yeares, life, or estate Taile, so a Release of a right made to a particular Tenant for life, or in Taile, shall aide and benefit him or them in the remainder.

If two Tenants in Common of Land graunt a Rent charge of 40.s. out of the same, to one in fee, and the Grantee releaseth to one of them, this shall extinguish but twenty shillings, for that the Graunt in judgement of Law was severall. So it is if two men be seised of severall Acres, and grant a rent ut supra. But there is a diversity between severall estates in severall lands, and severall estates in one land, for if one be Tenant for life of lands, the reversion in fee over to another, if they two joyne in a grant of a rent out of the Lands, if the Grantee releaseth either to him in the reversion, or to Tenant for life, the whole rent is extinguished, for it is but one rent, & issueth out of both estates, and so note the diversity.

¶ *Si le Tenant ad le fait en son poigne a pleader.* And so it is in both cases: for albeit he in the reversion or remainder is a stranger to the Deed when the release is made to the Tenant, and the Tenant for life or in Taile is a stranger to the Deed, when the release is made to him in reversion or remainder, yet seeing they are privies in estate, none of them in pleading shall take benefit thereof, without shewing the same in Court, which is worthy to be observed.

¶ *Sils ceo poient monstre.* The one cannot plead the release made to the other, without shewing of it, for that they are privie in estate, as hath been said. The residue of these two Sections needs no explication.

CET nota, Que chescũ release fait a celuy que ad un reversion ou un remainder en Fait, serbera & aidera celuy que ad le Franktenement, auxybien come a celuy a que le Release fuit fait, si le Tenant avoit le Release en son poigñ de pleader.

And note, that every Release made to him which hath a reversion or a Remainder in Deed, shall serve and aide him who hath the Freehold, as well as him to whom the Release was made, if the Tenant hath the Release in his hand to plead.

Sect.453.

CET en meisme le manner est lou un Release ẽ fait al Tenant pur terme de vie, ou al Tenant en le Taile, ceo urera a eux en le reversion, ou a cux en le Remainder, auxybien come al Tenant de Franktenement, & averont auxy grand advantage de cel, sils ceo poyent monstre.

IN the same manner it is, where a Release is made to the tenant for life, or to the Tenant in Taile, this shall enure to them in the reversion, or to them in the remainder, as well as to the Tenant of the Freehold, and they shall have as great advantage of this, if they can shew it.

35.H.6.8.

Sect. 454.

ITem, ſi ſoit Seignior & Tenant, & le Tenant ſoit diſſeiſie, & le ſeignior releſſa al Diſſeiſee tout le droit que il avoit en le ſeigniorie, ou en le terre, cel releaſe eſt bone, & le Seigniorie eſt extinct, & ceo eſt pur cauſe del privitie, que eſt perenter le Seignior, & le Diſſeiſee, car ſi les avers le diſſeiſee ſoient pris, & de eux le Diſſeiſee ſuiſt un Replevin envers le Seignior, il compellera le Seignior davower ſa luy, car ſil avower ſur le Diſſeiſor, donques ſur l'matter monſtre lavowrie abatera, car le Diſſeiſee eſt Tenant a luy en droit & en la Ley.

ALſo if there bee Lord and tenant, and the Tenant be diſſeiſed, and the Lord releaſeth to the Diſſeiſee all the right which hee hath in the Seigniory or in the Land, this Releaſe is good, and the Seigniory is extinct: And this is by reaſon of the privity which is betweene the Lord and the Diſſeiſee: for if the Beaſts of the Diſſeiſee bee taken, and of them the Diſſeiſee ſueth a Replevin againſt the Lord, he ſhall compell the Lord to avow upon him, for if he avow upon the diſſeiſor, then upō the matter ſhewen the Avowrie ſhall abate, for the Diſſeiſee is Tenant to him in right and in Law.

CHereupon may bee collected and obſerved two diverſities: Firſt, Betweene a Seigniory or Rent ſervice, and a rent Charge: for a Seigniory or Rent ſervice may bee releaſed and extinguiſhed to him that hath but a bare right in the Land. And the reaſon hereof is in reſpect of the privity betweene the Lord and the Tenant in right, for he is not only as Tenant to the Avowrie, but if hee dye his heire within age, hee ſhall bee in ward; and if of full age, hee ſhall pay reliefe, and if he die without heire, the Land ſhall eſcheat. But there is no ſuch privity in caſe of a Rent charge, for there the charge only lyeth upon the Land.

The ſecond diverſity is betweene a Seigniory and a bare right to land: for a Releaſe of a bare right to Land, to one that hath but a bare right is voide, as hath been ſaid. But here in the caſe of our Author, a Releaſe of a Seigniory to him that hath but a right, is good to extinguiſh the Seigniory. Vide Sect 451.

Nota, a Seigniory, Rent, or Right, either in præſenti, or in futuro, may be releaſed five manner of waies, and the firſt three without any privity. Lib.10.fol.48.Lampets caſe.

Firſt, To the Tenant of the Freehold in Deed or in Law.

Secondly, To him in remainder. Thirdly, To him in the reverſion. The other two in reſpect of Privity, as firſt, here the Lord releaſeth his Seigniory to the Tenant being diſſeiſed, having but a right, and no eſtate at all. Secondly, in reſpect of theyr Privity, without any eſtate or right, as by the Demandant to the Vouchee, or Donor to the Donee, after the Donee hath diſcontinued in fee, as appeareth hereafter in this Chapter. Sect.455.

¶ *Per cauſe de privitie, &c.* See for this word (Privitie) Sect.461.

¶ *Il compellera le Seignior davowrer ſur luy, &c.* This is regularly true, but if the Lord hath accepted ſervices of the Diſſeiſor, then the Diſſeiſee cannot enforce the Lord to avow upon him, though his beaſts be taken, &c. 20.H.6.9.b. 41.E.3.26. 48.E.3.9. 2.E.4.6.2.

If a man hath title to have a writ of Eſcheat, if he accept homage or fealty of the Tenant, he is barred of his writ of Eſcheat: but if he accept rent of the Tenant, that is no bar to him, for it may be received by the hands of a Bayliffe. (d) But Bracton doth hold, that if there be Lord and Tenant, and the Tenant be diſſeiſed, & the Diſſeiſee die without heire, the Lord accepts rent by the hands of the Diſſeiſor, this is no barre to him. Contrary it is, if he avow for the rent in Court of Record, or if he take a corporall ſervice, as Homage or Fealty, for the Diſſeiſor is in by wrong: but if the Lord accept the rent by the hands of the heire of the Diſſeiſor, or of his Feoffee, becauſe they be in by title, this ſhall barre him of his Eſcheat. Which is to be 31.E.1.Diſcent 17. 26.E.3.72. 4.H.6.21. F.N.B.144.o. (d) 7.E.6.tit.Eſcheat Br.l.8.

be understood of a discent or Feoffment, after the title of Escheat accrued: (e) for if the Disseisor make a Feoffment in Fee, or die seised, & after the Disseisee die without Heire, then there is no Escheat at all, because the Lord hath a Tenant in by Title. And when Littleton wrote, the Disseisee in the case here put, should have compelled the Lord to have avowed upon him, as Littleton holdeth. But now this is altered by a latter Stat. of (f) 21.H.8. for whereas by Fines, Recoveries, Grants, and secret Feoffments, &c. made by Tenants to persons unknowne, the Lords were put from knowledge of their Tenants, upon whom by order of Law they should make their avowry, &c. It is by that Statute enacted, That if the Lord shall distreine upon the Lands and Tenements holden, &c. that hee may avow, &c. upon the same Lands, &c. as in Lands, &c. within his Fee or Seigniory, &c. without naming of any person certaine, and without making avowry upon a person certaine. Upon which Statute these foure points are to be observed: First, That the Lord hath still election either to avow according to the Common Law, by force of the Statute, by reason of this word (May.) Secondly, Albeit the purview of the Act be generall, yet all necessary incidents are to bee supplyed, and the scope & end of the Act to be taken: and therefore though he need not to make his avowry upon any person certaine, yet he must alledge Seisin by the hands of some Tenant in certain, within forty yeares. Thirdly, That if the avowry be made according to the Statute, every Plaintife in the replevin, or second deliverance, be he Termor or other, may have every answer to the Avowry that is sufficient; and also have aid, and every other advantage in Law, (disclaimer only except) for disclaime he cannot, because in that case the avowry is made upon no certaine person. Fourthly, where the words of the Statute be, If the Lord distreine upon the Lands and Tenements holden, yet if the Lord come to distreine, and the Tenant enchase his Beasts which were within the view, out of the Land holden, and there the Lord distrein, albeit the distresse be taken out of his Fee and Seigniory in that case, yet is it within the said Statute, for in judgement of Law the distresse is lawfull, and as taken within his Fee and Seigniory, and this Statute being made to suppresse Fraud, is to be taken by Equity,

(c) 7.H.4.17. 3.R.2. Entr.cong.38.2.H 4.8. 6.H.7.9. Vide Sect.556.

(f) 21.H.8.cap.19.

Lib.9.fol.135.Ascoughs case.

27.H.8.fol.4. 32.H.8. cap.2. Lib.9.fol.36. Bucknals case.

34.H.8. Avowrie Br.113. 27.H.8.4.& 20. Bucknals case ubi supra.

Lib.5.fol.22.in case Davowrie. 44.E.3.20. 11.H 7.4. 21.H.7.40. 34 H.6.18. 15.E.4.10. 6.R.2. Rescou.11.

Sect. 455.

ITem, si terre soit done a un home en Taile, reservant al Donor & a ses heires un certain Rent, si le Donee soit disseisie, & puis le Donor relessa al Donee & a ses Heires, tout le droit que il avoit en la terre, & puis le Donee enter en la terre sur le Disseisor, en cest case le rent est ale, pur ceo que le Disseisee al temps de release fait, fuit tenant en droit, & en la Ley al Donor, & avowr a fine force covient de estre fait sur luy per le Donor pur le rent adeter e, &c. Mes uncore rien de droit de terres, s, de le droit, de le reversion passera per tiel Release, pur ceo que le Donee a que le Release est fait, adonque navoit riens en la terre forsque tantsolement un droit, & issint le droit del terre ne pussoit adonques passer al Donee per tiel Release.

ALso if land be given to a man in Taile, reserving to the Donor & to his Heires a certain rent, if the Donee be disseised, and after the Donor release to the Donee & his Heires all the right which hee hath in the land, and after the Donee enter into the land upon the Disseisor, in this case the Rent is gone, for that the Disseisee at the time of the Release made, was Tenant in Right, & in Law to the Donor, and the Avowry of Fine force ought to be made upon him by the Donor for the rent behind, &c. but yet nothing of the right of the lands, (*viz.*) of the reversion, shall passe by such Release, for that the Donee to whom the Release is made, then had nothing in the land but onely a right, and so the right of the land could not then passe to the Donee by such Release.

¶ Si

¶ *Si le donee ſoit diſſeiſie, &c.* This is evident by that which hath been ſaid. But admit that the Donee maketh a feoffment in fee, and the Donor releaſe unto him and his Heires, all the right in the land, this ſhall extinguiſh the rent, becauſe the Lord muſt avow upon him, and yet the Tenant in taile after the feoffment hath no right in the land. But the reaſon is in reſpect of the priuity, and that the (m) Donor is by neceſſity compellable to avow upon him only, for if he ſhould avow upon the diſcontinuee, then it ſhould appeare of his own ſhewing, that the reuerſion whereunto the rent is incident ſhould be out of him, and conſequently the avowry ſhould abate, and ſo was it (n) reſolved Trin. 18. Eliz. in the Court of Common Pleas in Sir Thomas Wiats caſe, which I heard and obſerved. And Littleton ſaith here, that in caſe of the Diſſeiſin of fine force, the avowry muſt be made upon the Donee.

Vide Sect 454. 1.H.5.tit. grant.43.14.H.4.38.lib.3. fol.29.lib.6.58. Lampets caſe ubi ſupra.

(m) 10.E.3.26.48.E.3.8.b. 31.E.3.gard.116. 5.E.4.3. 7.E.4.27. 15 E.4.13.

(n) Trin. 18.Eliz. Sir Thomas Wiats caſe in Communi Banco.

¶ *Uncore riens de droit, &c. de reverſion &c.* Here the diverſity aforeſaid betweene the Rent Service, and a bare right to the land appeareth.

Sect.456.

CEN meſme le manner eſt, ſi leas ſoit a un pur terme de vie, reſervant al leſſor et a ſes heires certaine rent, ſi le leſſee ſoit diſſeiſie, et puis leſſor releſſa al leſſee, et a ſes heires, tout le droit que il ad en la terre, et apres le leſſee enter, coment que en ceſt cas le rent eſt extinct, uncore rien del droit de la reverſion paſſera, Cauſa qua ſupra.

IN the ſame maner it is, if a leaſe be made to one for term of life, reſerving to the leſſor & to his heires a certaine rent, if the leſſee be diſſeiſed, and after the Leſſor releaſe to the Leſſee and to his heires all the right which hee hath in the land, and after the leſſee entreth, albeit in this caſe the rent is extinct, yet nothing of the right of the reverſion ſhall paſſe, *Cauſa qua ſupra.*

CHereby the diverſity is made apparent between a Releaſe of a Rent Service out of land, and a Releaſe of right to land in this Section.

Sect.457.

CMES ſi ſoit veray ſeignior et veray tenant, et le tenãt fait un feoffmẽt en fee, le quel feoffee ne unque devient tenant al Seignior, ſi le Seignior releſſa al feoffor tout ſon droit, &c. ceſt releas eſt en tout void, pur ceo q̃ le feoffor ad nul droit en la terre et il neſt Tenant en droit al

BUt if there be very lord & very tenãt, and the tenant maketh a feoffment in fee, the wch feoffee doth never become tenant to the Lord, if the Lord releaſe to the feoffor all his right, &c. this releaſe is altogether void, becauſe the feoffor hath no right in the land, and he is not Tenant in right to the

CVeray *Seignior & veray tenãt.*

This is to be underſtood of a Lord in fee ſimple, and of a Tenant of like eſtate.

There be foure maner of avowries for Rents and Services, &c. viz. 1. Super verum tenentem, as in the caſe here put. 2. Super verum tenentem in forma prædicta, as where a Leaſe for life, or a gift in taile bee made, the remainder in fee. 3. upon one as upon his tenant by the manner omitting (verie) and this is when the Lord hath a particular eſtate in the Seignory, and ſo ſhall the Donor upon

Vide Aſcoughes caſe, l.9. fol.135,136. 20.H.6.9. 2.H.4.24. 12.E.4.2.26. H.6.avowrie 17.9.Eliz. Dier 257. 5.H.7.11.7.E.4.24. 20.E.3.avowrie 131.

upon the Donee, or Lessor upon the Lessee. 4. Sur le matter en la terre, as within his Fee and Seigniory. As where the Tenant by Knights Service maketh a Lease for life reserving a Rent, and dye his heire within age, the Gardeine shall avow upon the Lessee, viz. Super materiam prædictam in terris & tenementis prædictis ut infra feodum & Dominum suum. Now by the Statute the very Lord may avow, as in Lands within his Fee and Seigniory, without avowing upon any person in certaine.

47.E.3.f.1.ultimo. 38.H.6.23.

21.H.8.cap.19.

Seignior, mes tant solement tenant quãt al avowry faire, et il ne unques compellera le Seignior davower sur luy, car le Seignior avowera sur le feoffee sil voile.

Lord, but onely tenant as to make the avowry, and he shall never compell the Lord to avow upon him, for the Lord shall avow upon the feoffee if he will.

ibm Rep.9.135.

Here appeareth the diversity between a Tenant in Taile, and a Tenant in Fee Simple, for albeit Tenant in Taile make a feoffment in fee, yet the right of the Entaile remaine, and shall descend to the Issue in taile. But when the Tenant in fee simple make a feoffment in fee, no right at all remaine of his estate, but the whole is transferred to the Feoffee.

Also the Lord is not compellable in that case to avow upon the Feoffor, but if he will, as Littleton here saith, he may avow on the Feoffee, but so it is not, as hath been said, in case of Tenant in taile.

Note a diversity between Actions and Acts which concerne the right, and Actions & Acts which concerne the possession only. For a writ of Customes and Services lieth not against the feoffor, nor a release to him shall extinguish the Seigniory. So if a Rescons be made, an Assise shall not lie against the feoffor, and him that made the Rescous, because the feoffee is Tenant, and in Assise, the surplusage incroached shall bee avoided. For these Actions and Acts concerne the right, but of a seisin & an avowry which concerne the possession, it is otherwise. And if the Lord release to the feoffor, this is good between them, as to the possession and discharge of the Arrerages, but the feoffee shall not take benefit of it, for that, as hath bin said, it extendeth not to the right. But the feoffor shall plead a release to the feoffee, for thereby the Seigniory is extinct, as if Lessee for life doth waste, and grant over his estate, and the Lessor release to the Grantee, in an Action of waste against the Lessee, he shall plead the release, and yet he hath nothing in the land. And so in waste shall Tenant in Dower or by the Courtesie in the like case, and the vouchee, and the Tenant in a Præcipe after a feoffment made. And so in a Contra formam collationis.

¶ *Le feoffee ne unques deveigne tenant.* Nota, here an excellent point of Learning, viz. if there be Lord and Tenant, and the Rent is behind by divers yeares, and the Tenant make a feoffment in fee, if the Lord accept the Service or Rent of the feoffee due in his time, he shall lose the Arrerages due in time of the feoffor, for after such acceptance hee shall not avow upon the feoffor, nor upon the feoffee for the Arrerages incurred in the time of the feoffor. But in that case if the feoffor dieth, albeit the Lord accept the Rent or Service by the hand of the feoffee due in his time, he shall not lose the Arrerages, for now the Law compelleth him to avow upon the feoffee, and that which the Law compelleth him unto, shall not prejudice him.

4.E.3.22.7.E.3.8.7.E.4.27. 29.H.8.tit.avowrie. Br.111. Li.3.fol.65.66.Pennants case.7.H.4.14. 2.E.4.6. 34.H.6.46. 37.H.6. 29.H.8.avowrie.

So it is, and for the same reason, if there be Lord, Mesne, and Tenant, and the rent due by the Mesne is behinde, and after the Tenant forejudge the Mesne, and the Lord receive the Services of the Mesne which issue out of the Tenancy, he shall not be barred of the Arrerages which issued out of the Mesnalty, and so if the rent be behinde, & the Tenant dyeth, the acceptance of the Services by the hand of the heire shall not barre him of the Arrerages, for in these cases albeit the persons be altered, yet the Lord doth accept the services of him which only ought to doe them.

4.E.3.22.47.E.3.4.

But as long as the feoffor liveth, the Lord shall not be compelled to avow upon the feoffee, unlesse he giveth the Lord notice, and tender unto him all the Arrerages.

21.H.8.cap.19.

But now by the Statute the Lord may avow upon the lands so holden, as in lands within his Fee or Seigniory without naming of any person certaine to bee Tenant of the same, and without making of any avowry upon any person certaine, as hath been said, which hath much altered the Common Law in the cases abovesaid, for the benefit and safety of the Lord.

But yet these cases are necessary to be knowne (for which purpose I have added them) for that the Lord may avow still at the Common Law if he will.

Sect.

Sect.458.

¶ Autrement est lou le veray tenant est disseisie, come en le cas avantdit, car si le veray tenant que est disseisie teigne del Seignior per service de chivaler & morust (son heire esteant deins age) le Seignior avera & seisera l'garde del heire, & issint navera, il my le gard del feoffor que fist le feoffment en fee, &c. issint il est graund diversity enter les deux cases, &c.

Otherwise it is where the very tenant is disseised, as in the case aforesaid, for if the very tenant who is disseised, hold of the Lord by Knights Service and dieth (his heire being within age) the Lord shall have and seize the Wardship of the heire, and so shall he not have the ward of the feoffor that made the feoffmẽt in fee, &c. So there is a great diversity betweene these two cases.

Of this sufficient hath been said before.

12.H.4.13. 36.E.3.tit. gard. 10.6.H.7.9. 37.H.6.1. 32.H.6.27. 7.E.6.tit. gard.Br.

Sect. 459.

¶ Item, si un home lessa a un auter son terre pur terme dans, si le lessor relessa al lessee tout son droit, &c. devant que le lessee avoit enter ẽ mesme le terre per force d' mesme l'leas, tiel releas est void, pur ceo que le lessee navoit poss. en la terre al temps del releas fait, mes tantsolement un droit daver mesme la terre per force de mesme le leas. Mes si le lessee enter en mesme la terre, & ent eit poss. per force de mesme le leas, donque tiel releas fait a luy per le feoffor, ou per son heire, est sufficient a luy per cause del privitie, que per force del leas est perenter eux, &c.

Also if a man letteth to another his land for terme of yeares, if the lessor release to the lessee all his right, &c. before that the lessee had entred into the same land by force of the same lease, such release is voide, for that the lessee had not possession in the land at the time of the release made, but onely a right to have the same land by force of the lease. But if the lessee enter into the land, and hath possessiõ of it by force of the said lease, then such release made to him by the feoffor, or by his heire, is sufficient to him, by reason of the privity which by force of the lease is between them, &c.

¶ *Devant que le lessee avoit enter, &c.* For before entry the lessee hath but interesse termini, an interest of a term, and no possession, and therefore a release, which enure by way of enlarging of an estate cannot worke without a possession, for before possession there is no reversion, & yet if a tenant for twenty years in possession, make a lease to B. for 5. years, and B. enter, a release to the first lessee is good, for hee had an actuall possession, & the possession of the lessee is his possession. And so it is if a man make a lease for yeares, the remainder for yeares, and the first lessee doth enter, a release to him in the remainder for yeares is good to enlarge his estate.

49.E.3.28. 32.H.6.8. 37.H.6.18. 22.E.4.37. 4.H.7.10. 15.H.7.14.

22.E.4. Surrender 6.

But if a man make a lease for yeares to begin presently, reserving a rent, if before the lessee doth enter the lessor releaseth all the right that he hath in the land, albeit this release cannot enlarge his estate, yet it shall in respect of the privity extinguish the rent. And so it is if a lease bee made to begin at Michaelmas, reserving a rent, and before the day the lessor release all the right that hee hath in the land, this cannot enure to enlarge

(b) Mich.39. & 40.Eliz. in Scaccario, between Sir Henry Woodhouse, & Sir William Paston.

enlarge the estate, but to extinguish the rent in respect of the privity, as it was resolved (b) in the Exchequer, which I observed.

A man granteth the next avoidance of an Advowson to two, the one of them may before the Church become void release to the other, for although the Grantor cannot release to them to increase their estate, because their interest is future, and not in possession, yet one of them to extinguish his interest may release to the other in respect of the privity. But after the Church become void, then such a release is void, because then it is (as it were) but a thing in action. And this was resolved (c) by the whole court of Common pleas, which I my selfe heard & observed. And by consequent in the case of Littleton, if a Lease for yeares be made to two, albeit the Lessor before they enter cannot release to them to inlarge their estate, yet one of them may before entry release to the other.

(c) Pasch.38.Eliz. in quare impedit per Bennet vers. levesque de Norwich in Communi banco.

¶ *Mes tant solement un droit, &c.* which is not so to be understood that hee hath but a naked right, for then he could not grant it over, but seeing he hath Interesse termini before entry, he may grant it over, albeit for want of an actuall possession he is not capable of a release to enlarge his estate.

Pl.Com.423.

¶ *Mes si le lessee enter en mesme le terre, &c.* This is evident. And herein note a diversity between a Lease for life, and for yeares, for before the Lessee for yeares enter, a Release cannot be made unto him, but if a man make a Lease for life, the Remainder for life, and the first Lessee dieth, a release to him in the remainder and to his heires is good before he doth enter to enlarge his estate, for that he hath an estate of a Freehold in Law in him, which may be enlarged by Release before entry.

And where our Author speaketh only of a Lessee for years, the same law it is of a Tenant by Statute merchant or Staple, or Tenant by Elegit, or the like.

25.E.3.53. 31.E.3. Confirmat.14. 31.Ass. Pl.13.

Sect.460. & 461.

21.H.6.37. 2.E.4.6.b. 7.E.4.27. 8.E.4.16. 29.H.6.Release 6.

BY these two Sections is to be observed a diversity between a Tenant at will, and a Tenant at sufferance, for a release to a Tenant at will is good, because betweene them there is a possession with a privity, but a Release to a Tenant at sufferance is void, because her hath a possessiō without privity. As if lessee for yeares hold over his term, &c. a Release to him is void, for that there is no privity between them, and so are the Bookes that speake of this matter to be understood.

¶ * *Sed contrarium tenetur, &c.* This is of a new addition, & the booke here cited ill understood, for it is to be understood of a Tenant at sufferance.

¶ *De sa teste demesne occupia.* Hee doth not say, De sa teste

CEn mesme le maner est, come il semble, ou lease est fait a un home, a tener de l'lessor a sa volunt, per force de quel leas le lessee eit possession, si le lessor en cest case fait un releas al lessee, de tout son droit, &c. cest releas est assets bon pur le privitie que est penter eux, car en vain serra de faire estate per un liverie de seisin a un auter, lou il ad possession de mesmes les tenements per le leas de mesm̄ celuy devant, &c.

¶ * Sed contrarium tenetur, Pasch.2.Ed.4.p touts les Justices.

IN the same manner it is, as it seemeth, where a Lease is made to a man to hold of the Lessor at his will, by force of which Lease the Lessee hath possession, if the Lessor in this case make a release to the Lessee of all his right, &c. this release is good enough for the privity which is betweene them, for it shall bee in vaine to make an estate by a livery of seisin to another where he hath possession of the same lād by the lease of the same mā before, &c.

But the contrary is holden, *Pasch.2.E.4.* by all the Justices.

Sect.

Sect. 461.

¶ Mes lou home de ſa teſte demeſn occupia terꝛs ou tenements a la volunt celuy que ad le Franktenement, & tiel occupier ne claima riens forſq; a volunt, &c. ſi celuy que ad l' Franktenement voile releaſer tout ſõ droit al occupier, &c. tiel Releaſe eſt void, pur ceo que nul privitie ẽ perenter eux per leaſe fait al occupier, ne per auter manner, &c.

But where a man of his owne head occupieth Lands or Tenements at the will of him which hath the Freehold, and ſuch occupier claimeth nothing but at will, &c. if hee which hath the Freehold will releaſe all his right to the occupier, &c. this Releaſe is void, becauſe there is no privity betweene them by the leaſe made to the occupier, nor by other manner, &c.

demeſne enter, &c. ſo as this is to bee underſtood of a Tenant at ſufferance, viz. where a man commeth to the poſſeſſion firſt lawfully, and holdeth over. Vid. Sect. 68.

(m) For if a man entreth into Land of his owne wrong, and take the profits, his words to hold it at the will of the owner cannot qualifie his wrong, but hee is a Diſſeiſor, and then the Releaſe to him is good, or if the owner conſented thereunto, then hee is a Tenant at will, and that way alſo the Releaſe is good. But there is a diverſity when one commeth to a particular Eſtate in Land by the Act of the party, and when by Act in Law, for if the Gardein hold over, hee is an Abator becauſe his intereſt came by Act in Law. (m) Temp. H.8. tit. Tenant a volunt. Br. 15. 2.E.4.38. 18.E.4.25. 39.E.3.28. 12.E.3.Aſſ. 86. 11.E.3.ibid.87. 12.Aſſ.21.13.E.3.Aſſ.92. 28.Aſſ.11.34.Aſſ.10. 10.E.3.41.3.E.3.63. Vide 2. part of the Inſtitutes Marlb. cap. 16. & 10.E.49,10.

¶ *Nul Privitie.* Privitie, is a word common aſwell to the Engliſh, as to the French, and in the underſtanding of the common Law is foure-fold. Old N.B. 127.137. Lib.3.fol.23.Walkers caſe. Lit.4.fol.123,124. Vid.Sect.454.

1 As Privies in Eſtate, whereof Littleton here ſpeaketh, as betweene the Donor and Donee, Leſſor and Leſſee, which privity is ever immediate.

2 Privies in Bloud, as the Heire to the Anceſtor, or betweene Coparceners, &c.

3 Privies in Repreſentation, as Executors, &c. to the Teſtator.

And fourthly, Privies in Tenure, as the Lord and Tenant, &c. which may be reduced to two generall heads, Privies in Deed, and Privies in Law.

Sect.462,& 463.

¶ Item, ſi home enfeoffe autrs hões de ſa terre, ſur confidence, & al entent de performer ſa darreiñ volunt, & le Feoffor occupiaſt meſme la terre a le volũt de ſes feoffees, & puis les feoffees releſſont per lour fait a lour feoffor tout lour droit &c. ceo ad eſte un queſtion, ſi tiel releaſe ſoit bon ou non. Et aſcũs ont dit q̃ tiel releaſe

Also if a man enfeoffe other men of his land, upon confidence, and to the intent to performe his laſt will, & the Feoffor occupieth the ſame Land at the will of his Feoffees, and after the Feoffees releaſe by their Deede to their Feoffor all their right, &c. this hath beene a queſtion if ſuch releaſe bee good or no. And ſome have ſaid, that

¶ Here is a queſtion moved, and the reaſons of both ſides ſhewed, and as it hath beene obſerved, the latter opinion is the better, being Littletons owne opinion. 12.E.4.12.b. 15.E.4. 9.H.7 25. Vid.Sect.302.176.340.

¶ *Il ſerra entendue per la Ley que le Feoffor doit maintenant occupie la terre a la volunt de les Feoffees.* For intendments of Law mentioned by our Author, ſee the Sections in the margent. 4.E.4.8.b. 9.H.7.fol. ultimo. 15.H.7 2.b. 14.H.8.9.a. Sect.99.100.110.367. 377.393.406.440.

Here is to bee obſerved the intendment of Law, that when a Feoffment is made to a future uſe, as to the performance of his laſt will, the Feoffees 35.H.6.Sub pena 22. 15.H.7.12.b. 37.H.7.36. 11.H.4.52. 7.H.4.12. 1.Mar.111.Dyer.

Feoffees shall be seised to the use of the Feoffor and of his Heires in the meane time.

Ipsæ etenim Lges cupiunt ut jure regantur.

And reason would that seeing the Feoffment is made without consideration, & the Feoffor hath not disposed of the profits in the meane time, that by construction and intendment of Law the Feoffor ought to occupy the same in the meane time. And so it is 35.H.6.Subpena, 22. 30.H.6.tit.Devise. when the Feoffor disposeth the profits for a particular time in præsenti, the use of the Inheritance shal be to the Feoffor and his Heires, as a thing not disposed of. Wherein it is to be observed, That Lands and Tenements conveyed upon confidences, uses, and trusts, are to be ruled and decided, if question groweth upon the confidences, uses, or trusts, by the Judges of the Law: for that it appeareth by this and the next Section, they are within the Entendment and Construction of the Lawes of the Realme.

And it is to be observed (as hath beene said) that there is a diversity betweene a Feoffment of Lands at this day upon confidence, or to the intent to performe his last will, and a Feoffment to the use of such person and persons, and of such estate and estates, as hee shall appoint by his last will, for in the first case, the Land passeth by the will, and not by the Feoffment, for after the Feoffment the Feoffor was seised in Fee simple as he was before, but in the latter Case the will pursuing his power is but a direction of the uses of the Feoffment, and the Estates passe by execution of the uses, which were raised upon the Feoffment, but in both cases the Feoffees are seised to the use of the Feoffor and his Heires in the meane time, and all this and much more concerning this matter hath beene adjudged.

Lib.6.fol.17.18.Sir Edward Cleres case.

Dillon & Frayns case, l.1. &c.fol.113.

Note, uses are raised either by transmutation of the estate, as by Fine, Feoffment, Common Recovery, &c. or out of the state of the owner of the Land, by bargaine and sale by Deed indented and inrolled, or by covenant upon lawful consideration, wherof you may read plentifully in my Reports.

A Feoffee to the use of A. and his Heires before the Statute of 27.H.8. for money bargaineth and selleth the Land to C. and his Heires, who hath no notice of the former use, yet no use passeth by this bargaine and sale, for there cannot be two uses in Esse, of one and the same Land, and seeing there is no transmutation of possession by the Terre-tenant, the former use can neither be extinct nor altered. And if there could be two uses of one and the same Land, then could not

est voyd, pur ceo que nul privitie fuit perenter les Feoffees & lour Feoffor, entant que nul Lease fuit fait apres tiel Feoffment per les Feoffees al Feoffor, a tener a lour volunt. Et aliens ont dit le contrarie, & ceo p̄ deux causes.

such Release is voyd, because there was no privity betweene the Feoffees & their Feoffor, insomuch as no Lease was made after such Feoffment by the Feoffees to the Feoffor, to hold at their will: and some have said the contrary, and that for two causes.

Sect. 463.

CUM est, Que quãt tiel feoffment est fait sur confidence a performer la volunt del Feoffor il serra intendue per la Ley, que le Feoffor doit maintenant occupier la terre a la volunt de ses Feoffees, & issint il est tiel manner de privitie enter eux sicome hõe fait un Feoffment as autres, & ils incontinent sur le Feoffment, voylent & grauntront que lour Feoffor occupier a la Terre a lour volunt, &c.

ONe is, That when such Feoffement is made upon confidence to performe the will of the Feoffor, it shall bee intended by the law, that the Feoffor ought presently to occupie the Land at the will of his Feoffees, & so there is the like kinde of privitie betweene them: as if a man make a Feoffment to others, & they immediately upon the Feoffment, will and grant, that their Feoffor shall occupie the Land at their will, &c.

not the ſaid Statute execute either of them for the uncertainty. But if A. diſſeiſeone to the uſe of B. and A. doth bargaine and ſell the land for mony to C. C. hath an uſe: and here be two uſes of one land, but of ſeverall natures, the one, viz. upon the bargaine and ſale to bee executed by the Statute, and the other not.

But ſince Littleton wrote, all uſes are transferred by Act of Parliament, (c) into poſſeſſion, ſo as the caſe which Littleton here puts is thereby altogether altered. Yet it is neceſſary to be knowne, what the Common Law was before the making of the Statute, and may ſerve for the knowledge of the Law in like caſe. (c) 27 H. 8. cap. 10.

¶ *Incontinent ſur le Feoffment.* Quæ incontinenti fiunt in eſſe videntur.

¶ *A lour volunt, &c.* Here is implyed, every Tenancy at will is at the will of both parties, as before in his proper place hath been ſhewed.

Sect. 464.

QUa aut cauſe ils allegeont, Que ſi tiel Fre vault xl. ſ. per an, &c. donque tiel Feoffor ſerra jure en Aſſiſes & en autres enqueſts en plees realx, & autre en plees perſonals de quel graund ſum que les Plaintifes voilent counter &c. Et ceo eſt p̄ le Common Ley de la terre, Ergo ceo eſt pur un graund cauſe, & la cauſe eſt, que la Ley voet que tiels Feoffors et lour Heires doient occupier &c. & prender & enjoyer touts maner de profits, iſſues, & revenues, &c. ſicome les Tenements fueront lour meſmes ſans interruption de les Feoffees, nient obſtant tiel Feoffment, Ergo meſme la Ley done p̄vitie perenter tiels Feoffors & Feoffees, ſur confidence, que les Feoffees ſerront ſeiſies a lour uſes.

A Nother cauſe they alledge, That if ſuch Land bee worth forty ſhillings a yeare, &c. then ſuch Feoffor ſhall be ſworne in Aſſiſe & other enqueſts in Plees reals, and alſo in Plees perſonals, of what great ſumme ſoever the Plaintiffe will declare, &c. And this is by the common Law of the land, *Ergo* this is for a great cauſe, and the cauſe is, for that the Law will that ſuch Feoffors & their Heires ought to occupie, &c. and take and enjoy all manner of profits, iſſues, and revenues, &c. as if the Lands were their own without interruption of the Feoffees, notwithſtanding ſuch Feoffement, *Ergo* the ſame Law giveth a privity betweene ſuch Feoffors & the Feoffees upon confidence,

¶ BY the Statute of 2 H. 5. cap. 3. Statut. 2. it is enacted, That in three caſes hee that paſſeth in an Enqueſt, ought to have Lands and Tenements to the value of fortie ſhillings, viz. Firſt, Upon tryall of the death of a man. Secondly, in Plea reall betweene party and party. And thirdly, In Plea perſonall, where the debt or the dammages in the Declaration amount unto fortie Markes. And it is worth the noting, That the Judges that were at the making of that Statute did conſtrue it by equity: for where the Statute ſpeakes in the diſjunctive debt or dammages, they adjudged that where the debt and dammages amounted to forty Markes, that it was within the Statute. Forteſcue (f) ſaith, Ubi damna vel debitum in perſonalibus Actionibus non excedunt quadraginta Marcas monetæ Anglicanæ, hinc non requiritur, quod Juratores in Actionibus hujuſmodi tantum expendere poſſint: habebunt tamen terram vel redditum, ad valorem competentem, juxta diſcretionem Juſticiariorum, &c. And forasmuch as at the time of the making of this Statute, the greater part of the Lands in England in thoſe troubleſome and dangerous times (when that unhappy controverſie betweene the Houſes of Yorke and Lancaſter was begun) were in uſe. And the Statute was made

28 H. 8. Dy. fol. 9. Vid. W. 2. cap. 38. Leſtat. de 21. E. 1. de Juratis ponendis in Aſſ. &c.

9 H. 5. fol. 5.

(f) Forteſc. cap. 15.

made to remedy a mischiefe, that the Sheriffe vse to return simple men of small or no vnderstanding, and therefore the Statute provided, That hee should returne sufficient men, and albeit in Law the Land was the Feoffees, yet for that they had it but upon trust, and Cesty que vse tooke the whole profits, as our Author here saith, and in equity and conscience the Land was his: therefore the Iudges for advancement and expedition of justice, extended the Statute (against the Letter) to Cesty que vse, and not to the Feoffees.

15.H.7.13.b.13.H.7.7.b. 5.E.4.7.a.

(n) But note if a man hath a Freehold pur terme dauter vie, or is seised in his wives right, and is returned on a Jury, yet if after he be returned, Cesty que vie, or his wife dis, he may be challenged, and so it is if after the returne the Lands be evicted.

(n)3.H.6.39.Challeng. 19. 21.H.6.39.

les Feoffees sur confidence, &c. pur quy causes ils ont dit que tiels Releases faits per tiels Feoffees sur confidēce a lour feoffor ou a les heires, &c. issint occupant la terre, serra assets bon, & ceste le melior opinion come il semble, &c.

&c. for which causes they have said, That such releases made by such Feoffees upon confidence to their feoffor or to his heires, &c. so occupying the Lands, shall bee good enough: and this is the better opinion, as it seemeth.

¶ Quære, car ceo semble nul Ley a cest jour.

Quære, for this seemeth no Law at this day.

¶ *Et ceo est per le Common Ley.* Here three things are to be observed. First, That the surest construction of a Statute is by the rule and reason of the common Law. Secondly, That uses were at the Common Law. Thirdly, That now seeing the Statute (g) of 27.H.8. ca.10. which hath been enacted since Littleton wrote, hath transferred the possession to the use, this case holdeth not at this day, but this latter opinion before that Statute was good Law, as Littleton here taketh it.

(g)27.H.8.cap.10.

¶ *Mesme la Ley done privitie, &c.* Hereof it followeth, That when the Law gives to any man any estate or possession, the Law giveth also privity and other necessaries to the same: and Littleton concludeth it with an Illative, Ergo mesme la Ley done privitie, which is very observable for a conclusion in other cases.

And the (Quære) here made in the end of this Section is not in the Original, but added by some other, and therefore to be rejected.

Also since Littleton wrote, the said Statute of 2.H.5. is altered: for where that Statute limited forty shillings, now a later Statute hath raised it to foure pounds, and so it ought to be contained in the Venire facias.

27.El.cap.6.

Nota, an Use is a Trust or Confidence reposed in some other, which is not issuing out of the Land, but as a thing collaterall, annexed in privity to the estate of the Land, and to the person touching the Land, scz. that Cesty que use shall take the profit, and that the Terre-tenant shall make an estate according to his direction. So as Cesty que use had neither Jus in re, nor Jus ad rem, but only a confidence and trust, for which he had no remedy by the Common Law, but for breach of trust his remedy was onely by Sub pœna in Chancery: and yet the Iudges for the cause aforesaid, made the said construction upon the said Statute.

Pl.Com.352.b.in Delamieres case, & 349.b. Lib.1.fol.121,122.127. 140.in Chudleyes case. Lib.2.fol.58.78. Lib.6.fol.64. Lib.7.fol.13,& 34.

Now how Jurors shall bee returned both in Common Pleas, and also in Pleas of the Crowne and in what manner evidence shall bee given to them, and how they shall be kept untill they give their verdict, you may read in Fortescue, & therefore need not to be here inserted.

Fortesc.cap.25,26,27.

Sect. 465.

Reg:

Flet.lib.5.cap.34. 15.H.7.14. 22.E.4.4.

¶ It is a certaine rule, that when a Release doth enure by way of enlarging of an estate, that there must be privitie of estate, as betweene Lessor and Lessee, Donor and Donee. For if A. make a Lease to B. for life, and the

¶ Item, Releases solonc̄ le matter en fait, ascū foits ont lour effect per force denlarger lestate celuy, a que

Also Releases according to the matter in fact, sometimes have their effect by force to enlarge the state of him to

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le release est fait, Sicome jeo lessa certain terre a un home pur terme des ans, per force de que il est en poss. & puis jeo relessa a luy tout le droit que jeo aye en le terre sans pluis parolx mitter en le fait, & deliver a luy le fait, donques il ad estate forsque pur terme de sa vie. Et la cause est, pur ceo que quant le ceversion ou le remainder est en un home, le quel voile enlarger per son release lestate le tenant, &c. il navera pluis greinder estate mes en tiel manner & forme, sicome tiel feoffor fuit seisie en fee, & volloit per son fait faire estate a un en certaine forme, & deliver a luy seisin p force dmesme le fait: si en tiel fait de feoffement ne soit ascun parol de enheritance, donques il ad forsq; estate pur terme de vie, & isslint il est en tiels releases faits per eux en la reversion ou en le remainder. Car si jeo lessa la terre a un home pur terme d sa vie, & puis jeo relessa a luy tout mon droit, sauns pluis dire e le release, whom the release is made. As if I let certaine Land to one for terme of yeares, by force whereof hee is in possession, and after I release to him all the right which I have in the land without putting more words in the Deede, and deliver to him the Deede, then hath hee an estate but for terme of his life. And the reason is, for that when the reversion or remainder is in a man who will by his release inlarge the estate of the Tenant, &c. hee shall have no greater estate, but in such manner & forme, as if such Lessor were seised in fee, and by his Deede will make an estate to one in a certain forme, and deliver to him seisin by force of the same Deede: if in such Deede of feoffement there be not any word of Inheritance, then he hath but an estate for life, and so it is in such Releases made by those in the reversion or in the remainder. For if I let land to a man for terme of his life, and after I release to him all my right without more saying in the release, his estate is not Lessee maketh a Lease for yeares, and after A. releaseth to the Lessee for yeares, and his heires, this release is void to enlarge the estate, because there is no privity betweene A. and the Lessee for yeares.

If a man make a Lease for twenty yeares, and the Lessee make a Lease for ten yeares, if the first Lessor doth release to the second Lessee and his heirs, this releas is void for the cause aforesaid.

For the same cause, if the Donee in taile make a Lease for his owne life, and the Donor release to the Lessee and his heires, this release is void to enlarge the estate.

And as privity is necessarie in this case, so privity only is not sufficient. As if an Infant make a Lease for life, and the Lessee granteth over his estate with warranty, the Infant at full age bringeth a Dum fuit infra ætatem, the Tenant voucheth his Grantor, who entreth into warranty, the demandant releaseth to him and his heires; here is privity in Law, and a tenancie in supposition of Law, and yet because hee in rei veritate hath no estate, it cannot enure to him by way of inlargement, for how can his estate be enlarged, that hath not any?

If a Tenant by the courtesie grant over his estate, yet he is tenant as to an Action of Waste, Attornement, &c. and yet a release to him and his heires cannot enure to inlarge his estate that hath no estate at all.

But if a man make a Lease for yeares, the remainder for life, a release by the Lessor to the Lessee for yeares, and to his heires, is good, for that he hath both a privity and an estate, and the release also to him in the remainder for life and his heires, is good also.

If I grant the reversion of my Tenant for life, to another for life, now shall not I have an Action of Waste: but if I release to the Grantee for life, and his heires, now hee hath

43.E.3.16.4.per Persay & Finchden. 41.E.3.17.27.E.4.17. 338.

hath the Fee simple, and shall punish the waste done after.

It is further to be observed, that to a release that enureth by way of enlargement of the estate, there is not only required privity, as hath been said, and an estate also, but sufficient words in Law, to raise or create a new estate. If a man make a Lease to A. for terme of the life of B. and after release to A. all his right in the land, by this A. hath an estate for terme of his owne life, for a lease for terme of his owne life is higher in judgement of Law, than an estate for terme of another mans life.

son estate nest my enlarge. Mes si jeo relessa a luy & a ses heires, donques il ad fee simple, & si jeo relessa a luy & a ses heires de son corps engendres, donques il ad fee taile, &c. Et issint il covient de specifier en le fait quel estate celuy a q̃ le releas est fait a-bera.

enlarged: but if I release to him and to his heires, then he hath a Fee simple, and if I release to him and to his heires of his bodie begotten, then he hath a fee taile, &c. And so it behoveth to specifie in the Deede what estate hee to whom the Release is made shall have.

16.H.6.release 45. 22.E.2.release Statham. (a)13.H.4.6.Stanf.prer. 7.b. 18.E.4.5.22.Ass.12. 11.H.7.19.10.H.6.11.

If a Feme Covert bee Tenant for life, a release to the husband and his heirs is good, for there is both privity and an estate in the husband, wherupon the release may sufficiently enure by way of enlargement(a), for by the entermariage he gaineth a Freehold in his wives right.

¶ *Tout le droit.* Vide Sect. 650.

¶ *Pur terme des ans.* So it is if a Release be made to tenant by Statute Staple, or Merchant, or Tenant by Elegit, as hath been said, and so likewise to Gardeine in Chivalry which holdeth in for the value, by him in the reversion of all his right in the land, by this a freehold passeth for the life of him to whom the Release is made, for that is the greatest estate that can passe without apt words of Inheritance.

If a man make a lease for ten yeares, the remainder for twenty yeares, he in the remainder releaseth all his right to the Lessee, he shall have an estate for thirty yeares, for one Chattle cannot drowne another, and yeares cannot be consumed in yeares.

¶ *Mes si jeo, Release a luy & a ses heires, &c.* Here it is to be observed, that when a Release doth enure by way of enlargement of an estate, no Inheritance either in Fee simple, or Fee taile, can passe without apt words of Inheritance.

9.Eliz.Dier 263.10. Eliz. Bendloes.Litt. lib.5.f.68. 69,70.b.130.b.

But there is a diversity between a Release that enureth by way of enlargement of the state, and by way of mitter lestate, for when an estate passeth by way of mitter lestate, there sometime there need not any words of Inheritance. As if a joynt estate be made to the husband & to his wife, and to a third person and to their heirs, the third person releaseth all his right to the husband, this shall enure by way of mitter lestate, and not by way of enlargement of the estate, because the husband had a fee simple, & needeth not to have any words of Inheritance. So it is if the Release had been made to the wife.

See before in the chapter of Fee simple.

(b)40.E.3.41.46.E.3. 19.H.6.33.H.6.5.10. E.4.3.

(b) If there be three Joyntenants, and one release to one of the other all his right, this enureth by way of mitter lestate, and passeth the whole Fee simple without these words (heires.) But if there be two Joyntenants, and the one of them release all his right to the other, this doth not to all purposes enure by way of mitter lestate, for it maketh no degree, and hee to whom the Release is made, shall for many purposes bee adjudged in from the first feoffor, and this Release shall vest all in the other Joyntenant without these words (heires.)

10.E.4.3.b.37.H.8.tit. alienation. Br.31.8.H.4.8. 40.Ass.5.9. Eliz.Dyer. 263.

But if there be two Coparceners, and the one release all his right to the other, this shall enure by way of mitter lestate, and shall make a degree, and without these words (heires) shall passe the whole Fee simple. And it is to bee observed, that to Releases that enure by way of mitter lestate, there must be privity of estate at the time of the Release.

If two Coparceners be of a rent, & the one of them take the Ter-tenant to husband, the other may release to her, notwithstanding the rent be in suspence, & it shall enure by way of Mitter lestate, and she may release also to the Ter-tenant, & that shall enure by way of extinguishment: but if she release to her sister and to her husband, it is good to be seen how it shall enure.

Vid.Litt.fol.68,69.

Littleton having now spoken of Releases that enure by way of Enlargement of the estate, and of Releases that enure by way of Mitter lestate, proceedeth to releases that enure by way of Mitter le droit. So as of that which hath beene and shall bee said by our Author of Releases, it appeareth that some doe enure by way of Enlargement of estate, some by way of Mitter lestate, some by way of Mitter le droit, by way of Entry and Feoffment, and some by Extinguishment.

Sect.

Sect. 466.

¶ Item, ascuns foits releases urera de mitter & vester le droit celuy que fait le release, a celuy a que le releas est fait. Sicome un home est disseisi, & il release a son disseisor tout le droit que il ad, en cest cas le disseisor ad son droit, issint que lou son estate adevant fuit tortious, ore per tiel releas il est fait loyal et droiturel.

ALso sometimes Releases shall enure de mitter and vest the right of him which makes the Release to him to whom the Release is made. As if a man bee disseised, and he releaseth to his disseisor all his right; in this case the disseisor hath his right, so as where before his state was wrongfull, now by this release it is made lawfull and right.

¶ *E Til release a a son disseisor, &c.* This release so putteth the right of the Disseisee to the Disseisor, that it changeth the quality of the estate of the Disseisor, for where his estate was before wrongfull, it is by this release made lawfull. But how farre, and to what respects his estate is changed shall be said hereafter in this Chapter in his proper place.

Sect. 467.

¶ Mes hic nota, q̃ quãt home est seisi en fee simple, dascun terres ou tenements, & un auter voile releaser a luy tout le droit que il ad ẽ meismes les tents, il ne besoigne de parler ỏ les heires celuy a q̃ le releas est fait, pur ceo que il avoit fee simple al temps de releas fait. Car si releas fuit fait a luy pur un jour, ou pur un heure, ceo serroit auxy fort a luy ẽ ley, sicome il ust releas a luy & a ses heires. Car quant son droit fuit ale de luy a un foits per son releas sans ascun conditiõ

BUt here note, that when a man is seised in fee simple of any lands or tenements, and another will release to him all the right which he hath in the same tenements, he needeth not to speake of the heires of him to whom the release is made, for that he hath a fee simple at the time of the release made: for if the release was made to him for a day or an houre, this shall bee as strong to him in law, as if he had released to him & his heires. For when his right was once gone from him by his release without any con-

¶ *Il nẽ besoigne a parler de les heirs, &c.* And the reason of Littleton hereof is, for that the Disseisor hath a fee simple at the time of the Release made. And this appeareth by that which hath been said before, so as regularly hee that hath a fee simple at the time of the Release made of a right, &c. needeth not speake of his heires.

¶ *Car si release fuit fait a luy pur un jour, &c.* For the diversity is between a Release of part of the estate of a Right, and between a Release of a Right in part of the Land. And therfore Littleton here saith, that a Release of a Right for a day or an houre is of as good force, as if he had released his right to him and his heires. But if a man be disseised of two acres, he may release his right in one of them, and yet enter into the other. Vide 6.E.3.17. 12.E.4.tit.Discent.P.39.

¶ *Sans ascun condition,*

tion, &c. Herein is implyed two diverſities, firſt betweene the quantity of the eſtate in a Right, and the quality thereof, for albeit the Diſſeiſee cannot releaſe part of the ſtate, as hath been ſaid, yet may he releaſe his right upon condition, as here it appeareth by Littleton, (c) and it agreeth with our Bookes.

&c. a celuy que ad fee ſimple, il eſt ale a touts jours.

dition, &c. to him that hath the fee ſimple, it is gone for ever.

(c) 4.E.2.Releaſe 50. 43.Aſſ.12.17.Aſſ.2. 31.Aſſ.13.21.H.24.

Alſo here is another diverſity betweene a right, whereof Littleton putteth his caſe, which is favoured in Law, and a condition created by the party which is odious in Law, for that it defeateth eſtates. And therefore if a condition bee releaſed upon condition, the Releaſe is good, and the condition voyd.

What things may be done upon condition is too large a matter to handle in this place, our Author having treated of conditions before: onely to give a touch of ſome things omitted there, ſhall ſuffice. An expreſſe Manumiſſion of a Villeine cannot be upon condition, for once free in that caſe, and ever free; alſo an Attornement to a Grantee upon condition, the condition is void becauſe the Grant is once ſetled. But this is to bee underſtood of a condition ſubſequent, and not of a condition precedent, for in both theſe caſes the condition precedent is good. But Letters patens of Denization made to an Alien, may be either upon condition ſubſequent or precedent, and ſo may the King make a Charter of pardon to a man of his life upon condition as is abovelayd.

Rot.Parliament. 18.H.6. num.29.Ap.Gwilliams caſe. 10.E.3.cap.2.3.H.7.f.6.

Sect. 468.

¶ MEs lou hom̃ ad un reverſion en fee ſimple, ou un remainder ẽ fee ſimple, al temps de releas fait, la ſil voyle releaſer al tenant per terme dans, ou pur terme de vie, ou al tenant en le taile, il covient a determiner leſtate que celuy, a que le releas eſt fait avera per force de meſme le releas, pur ceo que tiel releas enurera pur enlarger leſtate de celuy, a que le releas eſt fait.

BUt where a man hath a reverſion in fee ſimple, or a remainder in fee ſimple, at the time of the releaſe made, there if hee will releaſe to the tenant for years, or for life, or to the tenant in taile, hee ought to determine the eſtate, which hee to whom the releaſe is made ſhal have by force of the ſame releaſe, for that ſuch releaſe ſhall enure to enlarge the eſtate of him, to whom the releaſe is made.

Of this ſufficient hath been ſaid before.

Sect.469.

¶ MEs autrement eſt lou home ad forſque droit a la terre, & nad riens en le reverſion ne en le remainder en fait. Car ſi tiel home releſſa tout ſon droit a un que eſt ten̄ de le franktenement, tout ſon droit eſt ale, coment que nul mention ſoit fait de les heires celuy a que le releas eſt fait. Car ſi jeo leſſa terres a un home pur terme

BUt otherwiſe it is where a man hath but a right to the Land and hath nothing in the reverſion nor in the remainder in Deed. For if ſuch a man releaſe all his right to one which is tenant of the freehold, all his right is gone, albeit no mention be made of the heires of him to whom the releaſe is made: for if I let lands to one for terme of his life, if I after releaſe

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de ſa vie, ſi jeo puis releaſe a luy pur enlarger ſon eſtate, il covient q̃ jeo releſſa a luy & a ſes heires de ſon corps engender, ou a luy & a ſes heires, ou per tiels pols: A aver & ten̄ a luy & a ſes heirs d̃ ſon corps engendres, ou a les heires males de ſon corps engendres, ou tiels ſemblables eſtates, ou autrement il nad pluis greind̃ eſtate q̃ il avoit adevant.

to him to enlarge his eſtate, it behoveth that I releaſe to him and to his Heires of his body engendred, or to him and his Heires, or by theſe words: To have & to hold to him and to his Heires, of his body engendred, or to the Heires Males of his bodie engendred, or ſuch like eſtates, or otherwiſe hee hath no greater eſtate than hee had before.

¶ *Un que eſt Tenant de Franktenement.* Here it appeareth, that to a Releaſe of a right, made to any that hath an eſtate of Freehold in Deed or in Law, no privity at all is requiſite. As if a Diſſeiſor make a Leaſe for life, & the Diſſeiſee releaſe to the Leſſee, this is good, and directly within the rule of Littleton, becauſe the Leſſee hath an eſtate of Freehold, albeit there be no privity. And ſo it is if a Diſſeiſor make a Leaſe to A. and his heires, during the life of B. and A. dyeth, a Releaſe by the Diſſeiſee to his heire, before he doth actually enter, is good.

Sect.470.

¶ Mes ſi mon ten̄ a term̄ de vie, leſſa meſme la tre ouſter a un auter pur terme de vie de ſon Leſſee, le Remainder a un auter en fee, ore ſi jeo releſſa a celuy a que mon Tenant leſſaſt pur terme de vie, ceo ſerra barre a touts jours, coment que nul mention ſoit fait d̃ ſes Heires, p̃ceo que al temps de releaſe fait jeo avoy nul reverſion, mes tantſolement un droit daver la reverſion: car p̃ tiel leas, & le remainder ouſter que mon Ten̄t fiſt en ceo cas mon reverſion fuit diſcontinue, &c. & tiel releas urera a celuy ē l̃ remainder, daver advantage de ceo auribien come al Tenant a terme de vie.

But if my Tenant for life letteth the ſame Land over to another for terme of the life of his Leſſee, the remainder to another in Fee, now if I releaſe to him to whom my Tenant made a Leaſe for terme of life, I ſhall bee barred for ever, albeit that no mention be made of his Heires, for that at the time of the releaſe made I had no reverſion, but onely a right to have the reverſion. For by ſuch a releaſe and the remainder over which my Tenant made in this caſe my reverſion was diſcontinued, &c. and this releaſe ſhall enure to him in the remainder to have advantage of it as well as to the Tenant for terme of life.

¶ Littleton having before ſpoken of releaſes, which enure by way of Enlargement, by way of mitter leſtate, & by way of mitter le droit, here ſpeaketh of a releaſe of a right which in ſome reſpects enureth by way of Extinguiſhment, as in this caſe which Litt. here putteth, the Releaſe to the Leſſee of the Leſſee doth not enure by way of mitter le droit, for then ſhould he have the whole right, but as it were by way of Extinguiſhment, in reſpect of him, that made the releaſe, and that it ſhall enure to him in the remainder, which is a quality of an inheritance extingui-

extinguished. But yet the right is not extinct in deed, as shal be said hereafter in this Chapter.

¶ *Mon reversion fuit discontinue, &c.* Here Discontinue is in a large sense taken for Devested, though the entry of the Lessor be not taken away, which is implyed in this (&c.)

Sect. 471.

¶ *Sont come un Tenant en Ley.* which is certainly true in this case of Remainder, and so it is also in case of a Reversion, as if a Disseisor make a Lease for life, and the Disseisee doth release all his right to the Lessee, this Release shall enure, to him in the Reversion, albeit they have severall estates, as hath beene said, which is implyed in this (&c.)

But if a Disseisor make a Lease for life, the Remainder in fee, albeit they to some purposes (as here is said) are as one Tenant in Law, yet if the Disseisee release all Actions to the Tenant for life, after the death of the Tenant for life, he in the Remainder shall not take benefit of this Release, for it extended only to the Tenant for life, as it is holden (a) in Edward Althams case. And in like manner, if the Disseisor make a lease for life, and the Disseisee release all Actions to the Lessee, this enureth not to him in the reversion, and so our Author is to bee understood of a Release of Rights, and not of a Release of Actions, to the Tenant for life, as to or for the benefit of him in the Remainder or Reversion.

(a) Lib.8.fol.148. Edw. Althams case.

CAr a cel intent le Tenant a terme de vie, & celuy en le remainder sont sicome un Tenant en Ley, & sont sicome un Tenant fuit sole seisie en son demesne come de fee al temps de ret. Release fait a luy, &c.

FOr to this intent the Tenant for terme of life, and he in the Remainder, are as one Tenant in Law, and are as if one Tenant were sole seised in his Demesne as of fee at the time of such Release made unto him, &c.

Sect. 472.

¶ *Si home soit disseisie, &c.* This is to bee understood where Tenant in fee simple is disseised and release, for if Tenant for life be disseised by two, and hee releaseth to one of them, this shall enure to them both, for he to whom the Release is made, hath a longer estate than hee that releaseth, and therefore cannot enure to him alone, to hold out his companion, for then should the Release enure by way of entry and grant of his estate, and consequently the Disseisor to whom the Release is made should become Tenant for life, and the Reversion revested in the Lessor, (b) which strange transmutation and change of estates in this case the Law will not suffer. But if Lessee for yeares be ousted, and hee in the rever-

21.H.6.41.

(b) 13.E.4.tit. Discent. F.29.

CItem, si hõe soit disseisie per dux sil relessa, a un deux, il tiendra son compaignion hors de Terre, & per tiel Release il avera le sole possession & estate en la Terre. Mes si un Disseisor enfeoffa deux en fee, & l'Disseisee relessa a lun des feoffees, ceo urera a ambideux de les Feoffees, & la cause de diversity ent ceux deux cases est assets preignant. CPur

ALso if a man bee disseised by two, if he release to one of them, hee shall hold his Companion out of the Land, and by such Release hee shall have the sole possession and estate in the Land. But if a Disseisor infeoffe two in fee, and the Disseisee release to one of the feoffees, this shal inure to both the feoffees, & the cause of the diversity between these two cases is pregnant e-

ceo

ceo que ils veignont eins per feoffment, & lauters per tort, &c.

nough. For that they come in by feoffment, and the others by wrong, &c.

ſion diſſeiſed, and the Leſſee releaſe to the Diſſeiſor, the Diſſeiſee may enter, for the terme for yeares is extinct and determined. But otherwiſe it is in caſe of a Leſſee for life, for the Diſſeiſor hath a Freehold, whereupon the Releaſe of Tenant for life may enure, but the Diſſeiſor hath no terme for yeares, whereupon the Releaſe of the Leſſee for yeares may enure.

And ſo it is if Donee in Taile be diſſeiſed by two, and releaſeth to one of them, it ſhall enure to them both. But if the Kings Tenant for life be diſſeiſed by two, and he releaſeth to one of them, he ſhall hold out his companion, for the Diſſeiſor gained but the eſtate for life. So if two Joyntenants make a Leaſe for life, and after doe diſſeiſe the Tenant for life, and he releaſe to one of them, he ſhall hold out his Companion, for the Diſſeiſin was but of an eſtate for life.

because y^e K. cannot be diſſeiſed.

If Tenant for life be diſſeiſed by two, and he in the reverſion and Tenant for life joine in a Releaſe to one of the Diſſeiſors, he ſhall hold his Companion out, and yet it cannot enure by way of Entry and Feoffment. But if they ſeverally releaſe their ſeverall rights, their ſeverall Releaſes ſhall enure to both the Diſſeiſors.

But here in Littletons caſe, where Tenant in Fee ſimple is diſſeiſed by two, and releaſeth to one of them, this for many purpoſes enureth by way of Entry and Feoffment, and therefore he to whom the Releaſe is made ſhall hold out his Companion, and be made ſole Tenant of the Fee ſimple. And this holdeth not onely in caſe of a Diſſeiſin, but alſo in caſe of Intruſion and Abatement: but neceſſarily he to whom the Releaſe is made muſt be in by wrong, and not by title.

If two men doe gaine an Advowſon by uſurpation, and the right Patron releaſeth to one of them, he ſhall not hold out his Companion, but it ſhall enure to them both; for ſeeing their Clerke came in by admiſſion and inſtitution, which are judiciall acts, they are not meerely in by wrong: for an uſurpation ſhall cauſe a Remitter, as it appeareth in F.N.B. 31. m.

But if a Leaſe for life be made, the Remainder for life, the remainder in fee, & he in remainder for life diſſeiſeth the Tenant for life, and then Tenant for life dieth, the diſſeiſin is purged, and he in the remainder for life hath but an eſtate for life. And ſo note a diverſity where the particular eſtate for life is precedent, and when ſubſequent. 19 H. 6. 22. 38. H. 6. 28. Caſe de Occupant.

Where our Author putteth his caſe of one diſſeiſed, put the caſe that two Jointenants in fee be diſſeiſed by two, & one of the Diſſeiſees releaſe to one of the Diſſeiſors all his right, he ſhall not hold out his Companion, becauſe the Releaſe is but of the moity, without any certainty. If a man be diſſeiſed by two women, and one of them take Husband, and the Diſſeiſee releaſe to the Husband, this ſhal enure to the advantage of both the Diſſeiſors, becauſe the Husband was no wrong doer, but in a manner in by title.

¶ *Il avera le ſole poſſeſſion & eſtate.* If two Diſſeiſors be, and they make a Leaſe for life, and the Diſſeiſee releaſe to one of them, this ſhall enure to them both, and to the benefit of the Leſſee for life alſo: for he cannot by the releaſe have the ſole poſſeſſion and eſtate, for part of the eſtate is in another.

And ſo it is (as it ſeemeth) if the Diſſeiſors make a Leaſe for years, & the Diſſeiſee releaſe to one of them, this ſhal enure to them both, for by the releaſe he cannot have the ſole poſſeſſion: And it appeareth by Littleton, That he muſt have the ſole poſſeſſion, and hold his Companion out. But the Mortgagee upon condition, having broken the condition, is diſſeiſed by two, the Mortgagor having title of entry for the condition broken, releaſe to the one Diſſeiſor, albeit they bee in by wrong, yet the releaſe ſhall enure to them both for two cauſes: firſt, For that they are not wrong doers to the Mortgagor, but to the Mortgagee; and by Littletons caſe it appeareth, That wrong is done to him that made the Releaſe. Secondly, That he that make the Releaſe hath but a title by force of a condition, and Littletons caſe is of a right. Like Law of an entry for Mortmaine, or a conſent to raviſhment, &c.

¶ *Mes ſi un Diſſeiſor infeoffa deux, &c.* And the reaſon of this diverſity is, For that the Feoffees are in by Title, and are preſumed to have a warranty, which is much favoured in Law, and the Diſſeiſors are meerly in by wrong. And the equity of the Law doth preſerve in this caſe, the benefit of the eſtranger to the releaſe, comming in by one joint Title. 21. H. 6. 42.

¶ *Pur ceo que ils veignont eins per Feoffment, & lauters per Tort.* This is of a new addition, and not in the originall, and therefore I paſſe it over.

Sect.

Sect. 473.

¶ Item, ſi jeo ſue diſſeiſle, & mon Diſſeiſor eſt diſſeiſle, ſi jeo releaſe a le Diſſeiſor de mon Diſſeiſor, jeo naverá a unq̃ aſſ. ne entra ſur le Diſſeiſor, pur ceo que ſon Diſſeiſor ad mon droit per mon releaſe, &c. Et iſſint il ſemble en tiel cas, ſi ſoyent xx. diſſeiſors, cheſcun apres auter, & jeo releſſa a ſe darreine Diſſeiſor, celuy Diſſeiſor barrera touts les auters de lour actions & lour titles. Et la cauſe eſt, come il ſemble, pur ceo que en mults caſes, quant un home ad loyal title dentre, coment que il nentra pas, il defeatera touts meane titles per ſon releaſe, &c. Mes ceo neſt my en cheſcun caſe, come ſera dit apres.

ALſo if I bee diſſeiſed, and my Diſſeiſor is diſſeiſed, if I releaſe to the Diſſeiſor of my Diſſeiſor, I ſhall not have an aſſiſe nor enter upon the Diſſeiſor, becauſe his Diſſeiſor hath my right by my releaſe, &c. And ſo it ſeemeth in this caſe, if there be xx. diſſeiſed one after another, and I releaſe to the laſt Diſſeiſor, this Diſſeiſor ſhall barre all the others of their actions and their titles. And the cauſe is, as it ſeemeth, for that in many caſes when a man hath lawfull title of entry, although he doth not enter, he ſhall defeat all meane titles by his releaſe, &c. but this holds not in every caſe, as ſhall be ſaid hereafter.

¶ HEre it is to be obſerved, that a Releaſe by one whoſe Entrie is lawfull to him that is in by wrong, ſhall purge and take away all meane eſtates and titles. And where our Author firſt putteth his caſe of two Eſtates by wrong, and after of twenty Diſſeiſins, all Eſtates be wrong

If A. diſſeiſe B. who infeoffeth C. with warrantie, who infeoffe D. with warranty and E. diſſeiſeth D. to whom B. the firſt Diſſeiſee releaſeth, this doth defeat all the meane Eſtates and Warranties, becauſe the releaſe of B. is made to a Diſſeiſor, and his Entry is lawfull.

21.H.6.41.11.H.4.33. 9.H.9.25. 2.E.4.16. 21.E.4.78. 12.Aſſ.22. Vid.3.H.6.38.

Sect. 474.

¶ *Item, ſi mon Diſſeiſor leſſa, &c.* If the Diſſeiſor make a Leaſe for life, and the Leſſee maketh a feoffment in Fee, and the Diſſeiſee releaſeth to the Feoffee, the Diſſeiſor ſhall not enter upon the Feoffee, for albeit the Releaſe to one joint Feoffee of a Diſſeiſor as hath been ſaid, ſhal not exclude the other, yet a Releaſe to the Feoffee of a Tenant for life in this caſe ſhall take away the Entry of the Diſſeiſor for the alienation which was made to his

¶ Item, ſi mon diſſeiſor leſſa l'es tenemẽts dont il moy diſſeiſiſt a un auter home pur terme de vie, & puis l'Tenant a terme d' vie aliena en fee, & jeo releſſa al alienee, &c. donque mon Diſſeiſor ñ poit enter, Cauſa qua ſupra, coment q̃ a un

ALſo if my Diſſeiſor letteth the Tenements whereof he diſſeiſed mee to another for terme of life, and after the Tenant for terme of life alieneth in fee, and I releaſe to the Alienee, &c. then my Diſſeiſor cãnot enter, *Cauſa qua ſupra*, albeit that at one

foits

foits lalienation fuit a ſon diſenheritance, &c.

time the alienation was to his diſinheritance, &c.

Diſinheritance, hee having the Inheritance by diſſeiſin, ſo as hee could have no warranty annexed to it, and tenant for life hath forfeited his eſtate. But if the entry of the Diſſeiſee were not lawfull, it is otherwiſe. As if a man make a Leaſe for life, and the Leſſee for life is diſſeiſed, and that Diſſeiſor is diſſeiſed, and he in the reverſion releaſeth to the ſecond Diſſeiſor, the firſt Diſſeiſor ſhall enter upon the ſecond Diſſeiſor, and his entry is lawfull, and if the Leſſee for life re-enter, he ſhall leave the reverſion in the firſt Diſſeiſor, and the cauſe is, for that the entry of the Diſſeiſor at the time of the releaſe made was not lawfull. And the Booke of (m) 9.H.7.25. is to bee intended of an Eſtate taile mutatis mutandis. (m) 9.H.7.25.

If in the caſe aforeſaid, the Diſſeiſor make a Leaſe for life, and the Leſſee infeoffeth two, and the Diſſeiſee releaſe to one of the Feoffees, this ſhall barre the Diſſeiſor, as hath been ſaid, but yet he ſhall not hold out his companion for the cauſe aforeſaid.

Sect. 475.

¶ ITem, ſi home ſoit diſſeiſi, le q̃l ad fits deins age et mozuſt, et eſteant le fits deins age, le diſſeiſo, mozuſt ſeiſi, et la terre diſcendiſt a ſõ heire, & un eſtrange abate, et puis le fits le diſſeiſee quant il vient a ſon plein age, releſſa tout ſon droit a labator, en ceſt caſe lheire le diſſeiſor navera aſſiſe de Mozdanceſter envers labator mes ſerra bar, pur ceo que labator ad le droit del fits le diſſeiſee p ſon releas, et lentry le fits fuit congeable, pur ceo que il fuit deins age al temps del diſcent, &c.

¶ ALſo if a man bee diſſeiſed who hath a ſonne within age and dyeth, and the ſonne being within age the Diſſeiſor dieth ſeiſed, and the land deſcend to his heire, and a ſtranger abate, & after the ſonne of the Diſſeiſee when hee commeth to his full age releaſeth all his right to the abator, in this caſe the heire of the Diſſeiſor ſhall not have an Aſſiſe of Mordanceſter againſt the abator, but ſhall bee barred, becauſe the abator hath the right of the ſonne of the Diſſeiſee by his releaſe, and the entry of the ſonne was congeable, for that he was within age at the time of the Diſcent, &c.

¶ THe reaſon of this caſe is for that the entry of the heire is congeable, and the Abator is in the land by wrong. v. ſ. 473.

¶ *Abate*, Is both an Engliſh and French word, and ſignifieth in his proper ſenſe to diminiſh or take away, as here by his entry he diminiſheth and taketh away the Freehold in law deſcended to the heire, & ſo it is ſaid to abate an account, ſignifying ſubtraction or withdrawing, &c. and to abate the courage of a man. In another ſenſe it ſignifieth to proſtrate, beat downe, or overthrow, as to abate Caſtles, Houſes, and the like, and to abate a writ, and hereof commeth a word of Art, Abatamentum, which is an Entrie by Interpoſition. Now the difference inter Diſſeiſinam, Abatamentum, Intruſionem, Deforciamentum, & Uſurpationem, & Purpreſturam, is this. Ver.N.B.115.Britton. cap.51. Bracton, lib.4.cap.2. F.N.B.103.f.W.1.ca.17.

A Diſſeiſin is a wrongfull putting out of him that is actually ſeiſed of a Freehold. And Abatement is when a man dyed ſeiſed of an eſtate of Inheritance, and between the death & the entry of the heire, an eſtranger doth interpoſe himſelfe and abate.

Intruſion firſt properly (n) is when the Anceſtor dyed ſeiſed of any eſtate of Inheritance expectant upon an eſtate for life, and then tenant for life dyeth, and between the death and the entry of the heire an eſtranger doth interpoſe himſelfe and intrude. (n) F.N.B.203.Fleta,li.4. cap.30.

Secondly (o) he that entreth upon any of the Kings Demeſnes, and taketh the profits, is ſaid to Intrude upon the Kings poſſeſſion. (o) Pl.Comm.caſe de mynes.

p) F.N.B.141.f.g.h.

Thirdly (p) when the heire in ward entreth at his full age without satisfaction for his marriage, the writ saith, quod intrusit.

Deforciamentum comprehendeth not only these aforenamed, but any man that holdeth land whereunto another man hath right, be it by discent or purchase, is said to be a Deforceor. Usurpation hath two significations in the Common Law, one when an estranger that no right hath, presenteth to a Church, and his Clerke is admitted and instituted, hee is said to be an usurper, and the wrongfull act that he hath done is called an Usurpation.

Secondly, when any subject doth use without lawfull warrant, Royall Franchises, he is said to usurpe upon the King those Franchises. Purprestura, or Pourprestura, a Purpresture; (q) Purprestura est, &c. generaliter quoties aliquid fit ad nocumentum regii tenementi, vel regiæ viæ (vel aliquarũ publicarum) vel civitatis, &c. And because it is properly when there is a house builded, or an Inclosure made of any part of the Kings Demesnes, or of an high way, or a cõmon street or publike water, or such like publike things, it is derived of the French word Pourpris, which signifieth an Inclosure, but specially applyed, as is aforesaid, by the Common Law.

(q) Glanvil.lib.9. ca.11. Britton, fol.28.29.

Sect.476.

THere the entry of the Disseisee is congeable, and yet the release doth not avoid the condition, because the feoffee is in by title, as hath been said, and may have a warranty. And herein our Author expresseth a diversity between a Condition in Law, and a Condition in Deed, for in the case before when the Disseisee releaseth to the Feoffee of the Tenant for life, the Condition in law is taken away, but otherwise it is in this case of a Condition in Deed.

9.H.7.25.

But if the Feoffee upon Condition make a feoffment in fee over without any Condition, & the Disseisee release to the second Feoffee, the condition is destroyed by the release before the Condition broken or after. For the state of the second feoffee was not upon any expresse Condition, as Littleton here putteth his case, and he may have advantage of the release, because it is not against his owne proper acceptance, as Littleton speaketh in the next Section.

Lib.1.f.147. Mayowes case.

But if it be a wrongfull title, such a title is taken away by a release, as if A. disseised B. to the use of C. B. release to A. this shall take away the agreement of C. to the Disseisin, because it should make him a wrongdoer, as if the Disseisor be disseised, the disseisee releaseth to the second Disseisee, this taketh away the right the first Disseisor had against the second, and a relation of an estate gained by wrong shall never defeat an estate subsequent gained by right, against a single opinion, not affirmed by any other in one of our Bookes.

14.H.8.18.per Port.

MEs si home soit disseisi, & le disseisor fait feoffment sur condition, cestasçavoir, de rendre a luy certaine rent, et pur default d̃ payment un reentre, &c. si le disseisee relessa al feoffee sur condition uncore ceo nemẽdra lestate le feoffee sur condition, car nient obstant tiel releas, uncore son estate est sur condition si come il fuit devant.

¶ Et cum hoc concordat opinio omniũ Justiciariorum, P.9. H.7.¶.

BUt if a man be disseised and the disseisor maketh a feoffment upon condition, *viz.* to render to him a certain rent; and for default of payment a re-entry, &c. if the disseisee release to the feoffee upon condition, yet this shall not amend the estate of the feoffee upon condition, for notwithstanding such release, yet his estate is upon condition as it was before.

¶ And with this agreeth the opinion of all the Justices, *Pas.* 9.*H.*7.

Sect. 477.

¶ *ET le Disseisor grant un Rentcharge, &c.* Here is implyed Commons or any other

CEo meisme le manner est, lou home soit diss. de certeine terre, & le disseisor

IN the same manner it is where a man is disseised of certaine lands, & the Disseisor,

for

ſor graunt un rent charge hors de meſm̃ la terre, &c. coment que apres le diſſeiſee releſſa al diſſeiſor, &c. uncore le rent charge demurt en ſa force. Et la cauſe en ceux deux caſes eſt ceo, q̃ home naver advantage per tiel releas q̃ ſerra encounter ſon proper acceptance, & encounter ſon grant demeſne: & coment q̃ aſcuns ont dit que lou lentre de home eſt congeable ſur un tenant ſil releaſiſt a meſme le tenant, que ceo availeroit a le tenant, ſicome il uſt enter ſur le tenant, & puis luy enfeoffa, &c. ceo neſt pas voier en cheſcun cas. Car en le primer cas de ceux deux avauntdits caſes, ſi le diſſeiſee uſt enter ſur l'feoffee ſur condition, & puis luy enfeoffa, dõ ues eſt le condition tout defeat & avoid. Et iſſint en le ſecond caſe, ſi le diſſeiſee entrast & enfeoffa celuy que grant a l'rẽt charge, donques eſt le rent charge anient & avoyd, mes il neſt pas voyd per aſcun tiel releas ſans entry fait, &c.

grant a rent-charge out of the ſame land, &c. albeit the Diſſeiſee doth afterwards releaſe to the Diſſeiſor, &c. yet the Rent-charge remaineth in force. And the reaſon in theſe two caſes is this, that a man ſhall not have advantage by ſuch releaſe, which ſhall bee againſt his proper aeceptance, and againſt his owne grant. And albeit ſome have ſaid, that where the entry of a man is Congeable upon a Tenant if hee releaſeth to the ſame Tenant, that this ſhall availe the Tenant, as if hee had entred upon the Tenant, and after enfeoffed him, &c. this is not true in every caſe, for in the firſt caſe of theſe two caſes aforeſaid, if the Diſſeiſee had entred upon the Feoffee upon condition, and after enfeoffed him, then is the Condition wholly defeated and avoided. And ſo in the ſecond caſe if the diſſeiſee entreth and enfeoffeth him who granted the Rent-charge, then is the Rent-charge taken away and avoided, but it is not voide by any ſuch releaſe without entrie made. &c.

proſit out of the lands. And the reaſon is becauſe he ſhall not avoyd his owne grant by a releaſe, bee himſelfe hath acquired ſince the grant, but if the Diſſeiſor in that caſe be diſſeiſed, and the Diſſeiſee releaſe to the ſecond Diſſeiſor, he ſhall avoyd it, as by that which hath beene ſayd, Sect. 473. appeareth. So likewiſe if A. and B. bee joynt Diſſeiſors, and B. grant a Rent-charge, and the Diſſeiſee releaſe to A. all his right, A. ſhall avoyd the Rent-charge becauſe it was not granted by him, and ſo not within the reaſon of our Author.

If there bee two Femes joynt Diſſeiſors and the one taketh husband, and the Diſſeiſee releaſe to the other, ſhee is ſole ſeiſed and ſhall hold out the husband and wife.

If two Diſſeiſors bee, and they infeoffe another, and take backe an eſtate for life or in fee, albeit they remaine Diſſeiſors to the Diſſeiſee as to have an aſſiſe againſt them, yet if he releaſe to one of them, he ſhall not hold out his companion, becauſe their ſtate in the land is by feoffment. 7. 472.

If there bee two Diſſeiſors and they be diſſeiſed, and they releaſe to their Diſſeiſor, and after diſſeiſe him, and then the Diſſeiſee releaſe to one or both of them, yet the ſecond Diſſeiſor ſhall re-enter, for they ſhall not hold the land againſt their own releaſe; for Littleton here ſaith, that they ſhall not avoyd their owne grant, and by like reaſon they ſhall not avoyd their owne releaſe, Et ſic de ſimilibus.

¶ *Come ſil uſt enter ſur le tenant & luy enfeoffe.* Here is another kinde of releaſe, viz. a releaſe which enureth by way of entry and feoffment, for if a Diſſeiſee releaſe to one of the Diſſeiſors to ſome purpoſe this ſhall enure by way of entry and feoffment, viz. as to hold out his companion. But as to a Rent-charge grant-

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ted by him it shall not enure by way of entrie and feoffment, for if the disseisee had entred and enfeoffed him, the Rent-charge had beene avoyded. But it is a certaine rule, that when the entry of a man is congeable, and he releaseth to one that is in by title, (as hereto the feoffee upon condition is) it shall never enure by way of entry and feoffment, either to avoid a condition with which he accepted the Land charged, or his owne grant, or to hold out his companion.

And where it appeareth by our Author that acts done by the Disseisor shall not be avoided by the Release of the Disseisee. It is to be noted, that acts made to the Disseisor himselfe shall not be avoyded by the alteration of his estate by the release of the Disseisee, as if the Lord before the Release had confirmed the estate of the Disseisor to hold by lesser services, the Disseisor shall take advantage of it, and so of Estovers to be burnt in the house, and the like law of a warrantie made unto him.

If the heire of the Disseisor endow his wife Ex assensu patris, and the Disseisee release to the Disseisor, he shall not avoyd the endowment, for that is like the case put by Littleton of the Rent-charge.

If an alien be a Disseisor and obtaine Letters of Denization, and then the Disseisee Release unto him, the King shall not have the land, for the Release hath altered the estate, and it is as it were a new purchase, otherwise it is if the Alien had been the Feoffee of the Disseisor.

If the Lord disseise the Tenant, and is disseised, the Disseisee release to the second Disseisor, yet the Seigniory is not revived, for betweene the parties the Release enures by way of Entrie and Feoffment as to the land, but not having regard to the Seigniory, and for that the possession was never actually removed or revested from the Disseisor, who claimeth under the Lord, the Seigniory is not revived. But if the Lord and a stranger disseise the Tenant, and the Disseisee release to the stranger, there the Seigniory by operation of Law is revived, for the whole is vested in the stranger which never claimed under the Lord. And in that case, if the Lord had died, and the Land had survived, the Seigniory had beene revived. But if the Lord had disseised the Tenant, and been disseised by two, and the Disseisee released to one of them, the Seigniory is not revived, because he claimed (as hath beene said) under the Lord.

Sect. 478.

¶ *Quel brief de eux il esliera, &c.* Note many times in one case the Law doth give a man severall remedies, and of severall kindes, as in this case by action and by entry, by action, either a writ of Right, or Dum fuit infra ætatem.

Vide Sect. 514.

28.E.3.98. 9.E.4.46. 21.E.4.55. 41.E.3.10. 2.H.4.12.

¶ *Et puis le Disseisor porta briefe de droit, &c.* Here it appeareth that there is a great art and knowledge for a man that hath divers remedies to chuse his aptest remedie, as in this case, if he bring his writ of right, the Disseisor shall be barred, but if he had entred upon the heire of the Alienee, hee should have enjoyed the land for ever. For in that case the heire of the Alienee after such an entrie shall never have a writ of right no more than if the Disseisee entreth upon the heire of the Disseisor, and make a feoffment in fee, if the heire of the Disseisee

¶ Item, si hom̃ soit disseisie pur un enfant, le quel aliena en fee, & alienee deby seisie, & son heire enter, esteant le Disseisor deins age, ore est en election le Disseisour, d̃ aver un briefe de Dum fuit infra ætatem, ou briefe de droit envers le heire del alienee, & quel briefe de eux que il esliera, il doit recover per la ley, &c. Et auxi il poit enter en la terre sans ascun recoverie, & en cest case lentre l'Disseisie est tolk, &c. Mes en cest cas si le disseisie relessa son droit al

ALso if a man bee disseised by an infant, who alien in fee, and the Alienee dyeth seised, and his heire entreth, the disseisor being within age, now is it in the election of the disseisor to have a writ of *Dum fuit infra ætatem*, or a writ of right against the heire of the alienee, and which writ of them hee shall chuse, hee ought to recover by the law, &c. And also he may enter into the land without any recovery, and in this case the entrie of the disseisee is taken away,

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heire del alienee, & puis l'disseisor porta bre dit envers l'heir dalienee, & il joyne le mise sur l'mere droit, &c. le graunde assise doit trover per la ley que l'tenāt ad pluis mere droit que ad le Disseisor, &c. pur ceo que le Tenant ad le droit le disseisee per son release, le quel est pluis ancient & pluis mere droit. Car p tiel releas tout le droit le Disseisee passa a l'tenant, & est en le Tenant. Et a ceo que ascuns ont dit, que en tiel case lou hom̄ que ad droit al terres ou tenements (mes son entrie nest pas congeable) sil relessa al tenant tout son droit &c. que tiel release urera per voy dextinguishment: Quant a ceo il puit estre dit, q̄ ceo est voyer quant a celuy que relessa, car p son release il ad luy demise quietmēt de son droit, quant a son person, mes uncore le droit que il avoit bien poit passer a l'tenant per son release: Car encōvenient serroit que tiel ancient droit serroit extinct tout ousterment, &c. Car il est cōmunement dit que

&c. But in this case if the disseisee release his right to the heir of the Alienee, and after the Disseisor bringeth a Writ of right against the Heire of the Alienee, and he joyn the mise upon the meere right, &c. the great assise ought to finde by the law that the tenant hath more meer right than the Disseisor, &c. for that the tenant hath the right of the disseisee by his release, the which is the most ancient and most meer right: for by such release all the right of the Disseisee passeth to the Tenant, & is in the Tenant. And to this some have said that in this case where a man which hath right to lands or tenements (but his entry is not congeable) if he release to the Tenant all his right, &c. that such release shall enure by way of extinguishment. As to this it may be sayd that this is true, as to him which releaseth, for by his release he hath dismissed himselfe quite of his right as to his person, but yet the right which he hath may well passe to the Tenant by his release. For it should be inconvenient that such an ancient right should bee extinct altogether,

re-enter he shall detaine the land for ever, and the Feoffee shall not maintaine any writ of right, for a bare right shall never bee left in the Feoffee, but shall ever follow the possession, as hath beene said, but if the Disseisee entreth upon the Heire of the Disseisor, and make a Feoffment in Fee upon condition, and entreth for the condition broken before the Heire of the Disseisor enter, hee is restored to his right againe. 38.E.3.16. 24.H.8. Restore al primer action. 5. Vide Sect. 447.

A man maketh a gift in taile, the remainder in fee, Tenant in taile dieth without issue, an estranger intrude, and he in the remainder brings a Formedon, and recovereth by default, and maketh a Feoffment in fee, the Intrudor reverse the recovery in a Writ of disceit and entreth, he shall detaine the Land for ever, and the Feoffee shall not have a Writ of right. 9.H.7.24.

And so likewise if a Disseisor dye seised, and a stranger abate, and the Disseisee release to him, the Heire of the Disseisor shall enter and detaine the Land for ever. For the right to the possession shall draw the right of the Land to it, and shall not leave a right in him to whom the release is made, as hath been said before in the 447. Section. 9.H.7.24.

¶ *Le droit del Disseisee passa al tenant, & est en le tenant.* For seeing the Tenant hath the whole Fee simple, he is capable of the whole right of the Disseisee, and as Littleton here saith, the right is in the Tenant.

¶ *Inconveniens serroit.* Here againe, as hath beene often observed, an argument Ab inconvenienti is forcible in Law, and that Judges by the authority of our Author are to judge of inconveniēces as of things unlawfull, as hereby and Vide Sect. 87. 138, 139. 231, 269, 440, 421.

by many other places it appeareth.

¶ *Un droit ne poit pas morier.* Dormit aliquando jus, moritur nunquam.

droit ne poit pas morier.

&c. for it is commonly said, that a right cannot dye.

For of such an high estimation is right in the eye of the Law, as the Law preserveth it from death and destruction: trodden down it may be, but never trodden out. For where it hath beene said, that a Release of right doth in some cases enure by way of extinguishment; it is so to be understood, either (as Littleton doth here) in respect of him that makes the Release, or in respect that by construction of Law it enureth not alone to him to whom it is made, but to others also who be estrangers to the Release, which, as hath beene said, is a quality of an inheritance extinguished.

14.H.8.6.b. As if there be Lord and Tenant, and the Tenant maketh a Lease for life the remainder in fee, if the Lord release to the Tenant for life, the rent is wholly extinguished, & hee in the remainder shall take benefit thereof; even so when the heire of a Disseisor is disseised, and the 2. Disseisor make a lease for life, the remainder in fee, if the first Disseisee release to the Tenant for life, this is said to enure by way of extinguishment, for that it shall enure to him in the remainder, who is a stranger to the Release, and yet in truth the right is not extinct, but doth follow the possession, viz. the Tenant for life hath it during his time, and he in the remainder to him and to his heires, and the right of the inheritance is in him in the remainder, for a right to land cannot die or be extinct in Deed and therefore if after the death of Tenant for life, the heire of the Disseisor bring a writ of right against him in the remainder, and he joyn the mise upon the meer right, it shall be found for him, because in judgement of Law he hath by the said Release the right of the first Disseisee.

Sect.479,& 480.

14.H.8.fol.5,6. 21.H.7.25. 30.H.6. tit barre.39. 38.E.3.10.

¶ HEre Littleton putteth a diversity betweene Releases which enure by way of extinguishment against all persons, and whereof all persons may take advantage, and Releases which in respect of some persons enure by way of extinguishment, and of other persons by way of Mitter le droit. Or betweene Releases which in Deed enure by extinguishment, for that hee to whom the Release is made cannot have the thing released, and Releases which having some quality of such Releases are said to enure by way of extinguishment, but in troth doe not, for that he to whom the Release is made may receive and take the thing released. And here Littleton putteth cases where Releases doe absolutely enure by extinguishment without exception, having respect to all persons: and first of the Lord and Tenant. Secondly of the Rent-charge. Thirdly, of the Common of pasture.

First of the Lord and Tenant, and the Lord release to the Tenant his Seignory,

¶ Mes releases q̃ enurera p voy dextinguishment envers touts persons, sont lou celuy a que le releas est fait, ne poit aver ceo que a luy est releas. Sicome si soyent Sñr & tenant, & le Sñr relessa al tenant tout l' droit que il ad en la seigniory, ou tout le droit q̃ il ad en le t̃re, &c. tiel releas va per voy de extinguishmẽt envers touts persõs, pur ceo que le tenant ne poit aver service p̃ prender d̃ luy mesme.

But releases which enure by way of extinguishmẽt against all persons, are where he to whom the release is made cannot have that which to him is released. As if there be L. and tenant, & the L. release to the tenant all the right which hee hath in the seigniory, or all the right which he hath in the land, &c. this release goeth by way of extinguishmẽt against all persons, because that the tenant cannot have service to receive of himselfe.

Sect. 480.

¶ En mesmẽ maner est de re-

IN the same manner is it of a Release

leas

leas fait al Tenant del terre de un rent charge ou common d pasture, &c. pur ceo que le tenant ne poit aver ceo que a luy est releise, &c. issint tiels releases urera per extinguishment en touts voyes.

made to the tenant of the land of a Rent-charge or common of pasture, &c. because the tenant cannot have that which to him is released, &c. so such releases shall enure by way of extinguishment in all wayes.

this must of necessity enure by way of extinguishment to all men, for the Tenant cannot have service to be taken of himself, nor one man can be both Lord and Tenant. The second is of a Rent-charge, a man cannot have land and a rent issuing out of the same land. Thirdly, a man cannot have land & a Common of pasture issuing out of the same land, Et sic de cæteris. For in all these cases and the like hee to whom the Release is made cannot have and enjoy the thing that is released. But in the case of the right of the land, the Tenant of the land may take and enjoy it for strengthning his estate therein.

The mesne being a Feme entermarrie with the Tenant peravaile, if the Lord release to the Feme, the Seigniory only is extinct, but if he release to the husband, both Seigniorie and mesnalty are extinct. And in this case if the Lord release to the husband and wife, it is a question how the release shall enure, but it is no question but that a Release may be made to a mesnalty or a Seigniory suspended in part of the estate.

But here observe a diversity where a Release enureth by way of extinguishment of an inheritance, which is in possession and may be granted over, and a Release of a right, or an action to lands which cannot be granted over. (r) For the Lord may release his Seigniory to the Tenant of the land for life or in taile, Et sic de cæteris. But so cannot one release a right or an action, for if it be released but for an houre, it is extinct for ever, as hath been said. *F. 487*

(r) 13.E.3. tit. Extinguishment, Brook 45. & ut. Voucher. F.120. 30.E.3.13. 19.H. 6.19.21.E.3.31. 38.Ass.19. 11.H.4.tit. Release 21. 18.E.2.ibid.5. 26.H.8.3. 41.Ass.6.

And two things are to be observed here, first, that by the Release of all the right in the land the Seigniory is extinct, as well as by the Release of all the right in the Seigniory, for the Seigniory issueth out of the land. Secondly, That by the release of all his right in the Seigniory or the land, the whole Seigniory is extinct without any words of Inheritance. If the Tenancy be given to a Lord and to a stranger, and to the heires of the stranger, the Lord release to his Companion all the right in the land, this Release doth not only passe his estate in the Tenancy, but extinguisheth also his right in the Seigniory, and so one Release enures to extinguish severall rights in one and the same land.

If there be Lord and Tenant by Fealty and Rent, the Lord granteth the Seigniory for years, and the Tenant attorneth, the Lord releaseth his Seigniory to the Tenant for years, and to the Tenant of the Land generally, the whole Seigniory is extinct, and the state of the Lessee also. But if the Release had beene to them and their heires, then the Lessee had had the Inheritance of the one motty, and the other motty had been extinct. And the reason of this diversity is because when the release is made generally, it can enure to the Lessee but for life, because it enureth by way of enlargement of estate, and being made to the Tenant of the land, it enureth by way of extinguishment, as Littleton here saith, and then there cannot remain a particular estate in the Seigniory for life. But when the Release is made to them and their heires, each one takes a motty, the one by way of increasing of the estate, and the other by extinguishment.

Sect. 481.

Item d prober que le graund Assise doit passer pur l'demandant en le case avauntdit, jeo aye oye sovent la Lecture d Lestatute

Also to prove that the graund Assise ought to passe for the demandant, in the case aforesaid I have often heard the reading of the statute of West. 2.

¶ *Ieo aye oye sovent la Lecture de West 2.* Here it is to be observed, of what authority ancient Lectures or Readings upon Statutes were, for that they had five excellent qualities: First, They declared what the Common Law

Law was before the making of the Statute, as here it appeareth. Secondly, they opened the true sense & meaning of the Statute. Thirdly, their cases were briefe, having at the most one poynt at the Common Law, and another upon the Statute. Fourthly Plaine and Perspicuous, for then the honour of the Reader was to excell others in authorities, arguments, & reasons for proofe of his opinion & for confutation of the objections against it. Fifthly, they read, to suppresse subtill inventions to creepe out of the Statute. But now readings having lost the said former qualities, have lost also their former authorities, for now the cases are long, obscure, and intricate, full of new conceits, liker rather to Riddles than Lectures, which when they are opened they vanish away like smoake, and the Readers are like to Lapwings, who seem to be neerest their nests when they are farthest from them, and all their study is to finde nice evasions out of the Statute. By the authority of Littleton ancient Readings may be cited for proofe of the Law, but new Readings have not that honour, for that they are so obscure and darke.

de Westminster second, que commence, In casu quo vir amiserit per defaltam tenementum quod fuit jus uxoris suæ, &c. que a le Common Ley devant meſm Lestatut, si Lease soit fait a un home pur terme de vie, le remainder ouster en fee, & un estrange per feint Action ust recover envers le tenant a ẽme de vie per default, & puis le Tenant moruſt, celuy en le remainder navoit ascũ remedie devant le Statute pur ceo que il navoit ascun possession del terre.

which begunne thus: *In casu quo vir amiserit per defaltam tenementũ quod fuit jus uxoris suæ, &c.* that at the Common Law before the sayd Statute, if a lease were made to a man for terme of life, the remainder over in fee, and a Stranger by feigned Action recovered against the Tenant for life by default, and after the Tenant dyeth, he in the remainder had no remedie before the Statute, becaus hee had not any possession of the Land.

¶ *Lestatute de W.2.* which is the third Chapter.

(a) 24.E.3.35. 28.E.3.96. 18.E.2.Entrie 74. 3.E.2.Entrie 7. 6.E.3.24. 7.E.3.Ent.62. 7.E.3.54.55. 15.E.4.15. F.N.B.217.d. Register 241.

¶ *Le remainder ouster en fee.* Here is to be observed, that although the Statute speaketh of a Reversion, (a) yet by the authority of Littleton a remainder is within the Statute.

See the Statute of 14.Eliz.cap.8. which provideth fully for him in the remainder.

¶ *Feint action.* Feint is a Participle of the French word Fiendre, which is to feign or falsly pretend, so as a feint Action is a false Action.

(b) W.2.cap.5. Vid.14.E.3. Formdon 31. 11.E.3.ibid.31. 8.E.3.56. F.N.B.217.d. 7.H.7.13.

¶ *Navoit ascun remedie devant Lestatute.* (b) Here it appeareth by Littleton, That if a man maketh a Lease for life the remainder in fee, and Tenant for life suffereth a recovery by default, that he in the remainder should not have a Formedon by the common law: for Littleton saith, That he had not any remedy before the Statute. Neither is there any such writ in that case in the Register, albeit in some Books mention is made of such a writ.

Section 482.

38.E.3.2.Tit.Juris utrum.1.

THere a Disseisin gotten by wrong, and defeated by the entry of him that right hath, is sufficient to maintaine a writ of Right against the recoveror in this case, for albeit

MEs si celuy en le remainder ust enter sur le tenant a ẽme de vie, & luy disseisist, & ꝑs

BUt if he in the remainder had entred upon the Tenant for life, and disseised him, and after the Te-

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le Tenaunt entra sur luy, & apres le tenant a terme de vie, per tiel recovery perde per default & mozust, ore celuy en le remainder bien poit aver briefe de Droit envs celuy que recovera, pur ceo que le mise serre join solement sur le mere droit, &c. Uncore en ceste case, le seisin de celuy en le remainder fuit defeat per entrie del tenant a terme de vie. Mes peradventure aleuns voilent argue & dire, que il navera brief d Droit en ceste case, pur ceo q̄ quant le mise ē joine, il est joyn̄ en tiel mañ, s̄, si le tenant ad plus mere droit en le terre en le manner come il tyent, q̄ le demandant ad en le manner come il demanda & pur ceo que le seisin del dōt fuit defeat per lentry de le tenant a terme de vie, &c. donque il ad nul droit en le manner come il demaund.

nant enter upon him, & after the Tenant for life by such recovery lose by default and die, now hein the remainder may well have a Writ of Right against him whichrecovers, because the Mise shall be joined onely upon the mere right, &c. Yet in this case the Seisin of him in the remainder was defeated by the entry of the tenant for life. But peradventure some wil argue and say, That he shall not have a writ of Right in this case, for that when the Mise is joyned, it is joyned in this manner, (*scilicet*) if the Tenant hath more mere right in the land in the manner as he holdeth, than the demandant hath in the manner as hee demandeth, & for that the seisin of the demandant was defeated by the entry of the tenant for term of life, &c. then he hath no right in the maner as he demandeth.

the Seisin is defeated betweene the Lesse for life, and him in the remainder, yet having regard to the recoveror, who is a meere stranger and hath no title, it is sufficient against him. But otherwise it is against the party himselfe that defeated the Seisin, and the Law is propense to give remedy to him that right hath. And where some have thought, that there is no authority in Law to warrant Littletons opinion herein, they are greatly mistaken, for Littleton hath good warrant for all that he hath written. 7.E.3.62. 38.E.3.37. Tit. Jur. ult. 4

Lands are letten to A. for life, the remainder to B. for life, the remainder to the right heirs of A. A. dyeth, B. entreth and dyeth, a stranger intrudeth, the heire of A. shall have a writ of Right of the Seisin which A. had as Tenaunt for life.

Lands are letten to A. and B. and to the heires of A. A. dyeth, a recovery is had against B. the heire of A. shall have a writ of Right of the whole, for every Joyntenant is seised per my & per tout. *v. s.* 288

If lands be given in tayle, the remainder to A. in Fee, the Donee dyeth without Issue, his wife privement enseint, A. entreth, the Issue is borne and entreth upon him and dyeth without Issue, A. shall have a writ of Right of the Seisin which he had.

If lands be given in tayle to A. the remainder to his right heires, A. dyeth without Issue, the collaterall heire of A. shall have a writ of Right of the seisin of A. 4.E.3.16, 17.

And so note a diversity betweene a Seisin to cause possessio fratris, &c. for there is required a more actuall seisin, 40.E.3 8. 42.E.3.20. 37.Ass.4.24.E.4.24.7. H.5.4.11.H.4.11.

and a Seisin to maintaine a Writ of Right. And hereby also are the (&c) in this Section explained.

Sect. 483.

¶ Aceo poit estre dit, q̄ ceux parols (modo & forma prout, &c.) in mults cases sont

TO this it may bee said, that these words (*modo & forma prout, &c.*) in many cases are words parols

parols de forme de pleder, & ne-my parols de ſubſtance. Car ſi home port briefe dentre In caſu proviſo, del alienation fait per le tenant en dower a ſon diſinheritance, & counta del alienation fait en fee, & le tenant dit, que il ne aliena pas en le manner come le demaundant ad declare, & ſur ceo ſount a iſſue, & trove eſt per verdict, que le tenant alienaſt en le taile, ou pur terme dauter vie, le demaundant recoverra: uncore lalienation ne fuit en le manner come le demaundant avoit declare, &c.

of forme of pleading, & not words of ſubſtance: for if a man bring a Writ of entrie *In caſu proviſo*, of the alienation made by the Tenant in Dower to his diſinheritance, and counteth of the alienation made in fee, and the tenant ſaith, that he did not alien in manner as the demandant hath declared, and upon this they are at iſſue, and is found by verdict, that the Tenant aliened in taile, or for terme of another mans life, the Demandant ſhall recover: yet the alienation was not in manner as the Demandant hath declared, &c.

¶ Where Modo & Forma are of the ſubſtance of the iſſue, and where but words of forme, this diverſity is to be obſerved, (c) where the iſſue taken goeth to the point of the writ or Action there Modo & Forma are but words of forme, as here in the Caſe of the writ of Entrie in caſu proviſo, and ſo is the (&c.) well explained in this Section. But otherwiſe it is, when a collaterall point in pleading is traverſed, as if a feoffment be alledged by two, and this is traverſed Modo & Forma, and it is found the feoffment of one, there Modo & Forma is materiall. So if a feoffment be pleaded by deed, and it is traverſed Abſque hoc quod feoffavit Modo & Forma, upon this Collaterall Iſſue, Modo & Forma are ſo eſſentiall, as the Jury cannot find a feoffment without Deed.

(c) 9.H.6.1.40. E.3.35. 21.E.4.22.F.N.B. 206.g. 40.E.3.5. 32.H.8. iſſue, B.80. Vide Sect. ſequent.

12.E.4.4.

Sect. 484.

¶ *Trove eſt per verdict que il tient per fealtie, tantum.* Here is another diverſitie to be obſerved, That albeit the iſſue be upon a collaterall point, yet if by the finding of part of the iſſue, it ſhall appeare to the Court that no ſuch action lieth for the plaintife no more than if the whole had beene found, there Modo & Forma are but words of forme, as here in the caſe which Littleton putteth of the Lord and Tenant, appeareth.

Vide Sect. preced.

10.E.4.7. 8.E.4.15. 20.E.4.3. 21.E.4.3. Merlebr. cap. 3.

¶ *Car le matter del iſſue eſt le quel il tient de luy ou nemy, &c.*

Here it appeareth, that

CAury ſi ſoyent Sñr & le tient del Sñr per fealtie ſolement, & le Sñr diſtreine le tenant pur rent, & le tenant porta briefe de Treſpas envers ſon Seignior de ſes aberes iſſint priſes, & le Seignior plede que le tenant tient de luy per fealtie & certain rent, & pur le rent arere il vient a diſtreiner, &c. & demaunde judgemẽt de briefe port vers luy, Quare vi & armis, &c. & lauter dit que il ne tient de luy en le maner come il ſuppoſe, & ſur

ALſo if there bee Lord and Tenant and the Tenant hold of the Lord by fealty only, and the Lord diſtreine the Tenant for rent, and the Tenant bringeth a Writ of Treſpaſſe againſt his Lord for his cattell ſo taken, and the lord plead that the tenãt holds of him by fealtie and certaine Rent, and for the Rent behinde hee came to diſtreine, &c. and demand judgement of the Writ brought againſt him, *Quare vi & armis, &c.* And the other ſaith, that he doth not

ceo

cco ſont a iſſue, et trobe eſt per verdict que il tient de luy per fealtie tantum, en ceſt caſe le briefe abatera, et uncore il ne tient ō luy en le manner come le ſeignior avoit dit. Car le matter del iſſue eſt, le quel le tenant tient de luy ou nemy, car ſil tient de luy, coment que le Seignior diſtreina le tenant pur auter ſervices que ne doit aver, uncore tiel briefe de Treſpaſſe, Quare vi & armis &c. ne giſt envers le Seignior, mes ſerra abate.

hold of him in the manner, as hee ſuppoſe, and upon this they are at iſſue, and it is found by verdict that hee holdeth of him by fealty onely. In this caſe the Writ ſhall abate, and yet hee doth not hold of him in the manner as the Lord hath ſaid, for the matter of the iſſue is whether the Tenant holdeth of him or no, for if hee holdeth of him, although that the Lord diſtreine the Tenant for other ſervices which he ought not to have, yet ſuch Writ of Treſpaſſe, *Quare vi & armis, &c.* doth not lye againſt the Lord, but ſhall abate.

if the matter of the iſſue be found it is ſufficient. And this rule holds in criminall cauſes. For if A. be appealed, or indicted of Murder, viz. that hee of malice prepenſed killed I. A. pleadeth that he is not guilty modo & forma, yet the Jury may find the Defendant guiltie of Man-ſlaughter without malice prepenſed, becauſe the killing of I. is the matter, and malice prepenſed is but a circumſtance. Pl.Com.181.

In Aſſiſe of Darreine preſentment, if the Plaintife alledge the avoidance of the Church by priviation, and the Jury finde the voidance by death, the Plaintife ſhall have judgement, for the manner of voydance is not the title of the Plaintife, but the voydance is the matter. 6.E.3.41.b. 25.E.3.50. 9.H.7.3. 13.H.7.14. 29.E.3.38.

(d) If a Gardeine of an Hoſpitall bring an Aſſiſe againſt the Ordinary, he pleadeth that in his viſitation he deprived him as Ordinary, whereupon iſſue is taken, & it is found that he deprived him as Patron, the Ordinary ſhall have judgement, for the deprivation is the ſubſtance of the matter. (d) 8.E.3.70. 8.Aſſ.29. & 39.9.E.3.338. 24.E.3.34 5.H.4.2. 7.H.4.11. Pl.Com.92. 3.Mar.Dier.116. 40.E.3.35. Dier.2.& 3.Ph.& Mar. 115.b.

The Leſſee covenant with the Leſſor not to cut down any trees, &c. & bind himſelf in a bond of forty pounds for performance of Covenants, the Leſſee cut downe ten trees, the Leſſor bringeth an Action of Debt upon the bond, & aſſigneth a breach that the Leſſee cutteth downe twenty trees, whereupon iſſue is joyned, and the Jury finde that the Leſſee cut downe ten, judgement ſhall be given for the Plaintife. For ſufficient matter of the iſſue is found for the Plaintife. Trin.22.Eliz.Rot.920. Wolmans caſe. 48.E.3.28. 34.Aſſ.3. 30.Aſſ.5. 41.E.3.28. 33.E.3.verdict 47. 22.E.3.1.b. 18.E.3.48. 31.E.3.account 58. 28.Aſſ.48.

Sect. 485.

CAury en briefe de treſpaſſe de batterie, ou des biens emports, ſi le defendant plede de rien culpable, en le mañ come le Plaintife ſuppoſe, et trobe eſt que le Defendant eſt culpable en auter vile, ou a auter jour que le Plaintife ſuppoſe, uncore il recobera.

ALſo in a Writ of Treſpaſſe for batterie, or for goods carried away, if the Defendant plead not guilty, in manner as the Plaintife ſuppoſe, & it is found that the Defendant is guilty in another Towne, or at another day than the Plaintife ſuppoſe, yet he ſhall recover.

EN *briefe de treſpaſſe de battery & des biens emports, &c.*

Here Littleton ſpeaketh of Actions brought for things tranſitory. In which caſes the wrong being done in one Towne, the Plaintife may not only alledge it in another Towne, as Littleton here ſaith, but alſo in another County, & the Jurors upon not guilty pleaded are bound to finde for the Plaintife.

Neither can the aſſault, battery, or taking of goods, &c. alledged in another County, be traverſed without ſpeciall cauſe

cause of justification which extendeth to some certaine place, as if a Constable of a Towne in another County arrest the body of a man that breaketh the peace, there hee may traverse the County (but he must not rest there) but all other places saving in the Towne whereof hee is Constable. And so it is of taking of goods, the Defendant justifie for dammage feasant in another County he must traverse as before. But where the cause of the justification is not restrained to a certaine place, that is so locall as it cannot bee alledged in any other Towne, as in the cases before alledged, and the like, then albeit the action bee brought in a forraine Countie, yet he must alledge his justification in the County where the Action is brought. As if a man be beaten in the County of Middlesex, and hee bringeth his Action in the County of Buck. the Defendant cannot plead that the Plaintife assaulted him in the County of Midd. &c. and traverse the County, but he must plead his justification in the County of Buck. for that the cause of his justification is good in any place. And so it is in case of batement of goods, and other cases for transitory things, as for example.

Et issint en pluisors auters cases, ceux parols ſ. en le maner come le demaundant ou le plaintife ad suppose, ne font ascun matter de substance del issue. Car ē briefe de droit, lou le mise est joyne sur le mere droit, il est a tant a dire et a tiel effect, ſ. le quel ad pluis mere droit, le tenant ou le demandant al chose en demand.

And so in many other cases these words, s. in manner as the demandant or the plaintife hath supposed, do not make any matter of substance of the issue: for in a Writ of right, where the mise is joyned upon the meere right, that is as much to say, & to such effect, *viz.* whether the tenāt or demaundant hath more meere right to the thing in demand.

Trin.30.Eliz.in the Kings Bench, between Inglebert & Jones. And herewith agreeth a judgement in the Court of Com.Pleas, Pasch. 38.Eliz.Rot.1636.

In an action upon the case the Plaintife declared for speaking of slanderous words which is transitory, and laid the words to be spoken in London, the Defendant pleaded a concord for speaking of words in all the Counties of England, saving in London, and traversed the speaking of the words in London: the Plaintife in his replication denied the concord, whereupon the Defendant demurred, and judgement was given for the Plaintife. For the Court said, that if the concord in that case should not be traversed, it would follow, that by a new and subtile invention of pleading, an ancient principle in Law (that for transitory causes of action the Plaintife might alledge the same in what place or County he would) should be subverted, which ought not to be suffered, and therefore the Judges of both Courts allowed a traverse upon a traverse in that case: And the wisedome of the Judges and Sages of the Law have always suppressed new and subtle inventions in derogation of the Common Law. And therefore the Judges say in one booke (c) wee will not change the Law which always hath been used. And another saith (f) it is better that it be turned to a default, than the Law should be changed, or any innovation made.

A man did grant a rent, with a new invented clause of Distresse, viz. That the Grantee should hold the Distresse against gages and pledges, and yet by the whole Court he shall gage deliverance, for otherwise by this new invention all Replevies shall be taken away.

(*) See many other new inventions in derogation of the Common Law, disallowed by the Judges and by the Court of Parliament.

(h) where the Jury is bound to finde as well locall things in many cases as transitory in other Counties, see at large in my Reports.

By this which hath been said you shall know the Law as it is now in use in these cases, and the better understand our (i) books when you shall reade them concerning as well locall as transitory things, wherein you shall find great variety of opinion in our bookes.

¶ *Sic le defendant plead de rien culpable.* This is a good issue if the Defendant committed no battery at all, but regularly by the Common Law if the Defendant hath cause of justification or excuse, then can he not plead not guilty, for then upon the evidence it shall be found against him, for that he confesseth the battery, and upon that issue cannot justifie it, but he must plead the speciall matter, and confesse and justifie the battery.

The like Law is in other cases, and therefore this is a learning necessary to be knowne, for that the losse of most causes dependeth thereupon. As if in battery the Defendant may justifie the same to be done of the Plaintifes owne assault, hee must plead it specially, and must not plead the generall issue, and so of the like. In trespasse of breaking his close, upon not guilty he

(c) 38.E.3.7.
(f) 2.H.4.18.
31.E.3.Gages deliver.5.
(*) 42.Ass.12. 4.E.3.ca.5. 28.E.3.ca 1. & ca 6. 4.H.4.c.3.
(h) Lib.6.fol.46.47. Dowdales case.3 E.3. Ass.446. 27.E.3 85. 1.Ass.16. 3.ass 4. 6.ass.4. 5.Ass.7. 18.E.3.38. 21.Ass.8. 29.Ass 5. 44.E.3.6.b. 14.H.4.35. 5.H.5.2. 10.H 6.13. 21.H.6.31. 37.H.6.2. 7.E.4.45. 18.E.4.1. 22.E.4.19. 13.H.7.17. 2.M r.Br.attaint.104. 10.Eliz.Dier.271.
(i) 19.H.6.48. 11.H.6.16. 43.E.3.23.b. 45.E.3.3.a. 9.H.6.62. 21 H.6.27. 14.H.8.24. 18.E.4.1. 20.H.6.2. 34.H.6.43. 14.H.6 21.22. 4.H.6.13. 33.H.6.25. 12.E.4.12. 28.H.8.Dier.29. 21.E.4.19.80. 27.H.8. 19. 12.H.8.1. 11.H.4. 65. 19.H.8.5.

vi supra 379 c.

he cannot giue in euidence, that the beasts came thorow the Plaintifes bridge, which he ought to keep, nor vpon the generall issue iustifie by reason of a Rent-charge, Common, or the like. 25.H.8.Br.

In detinue the Defendant pleadeth Non detiner, he cannot giue in euidence, that the goods were pawned to him for money, and that it is not paid, but must pleade it, but he may giue in euidence a gift from the Plaintife, for that proueth, he detaineth not the Plaintifes goods. 22.H.6.33.

(d) So in an action of waste, vpon the plea Nul waste fait, he may giue in euidence any thing, that proueth it no waste, as by tempest, by lightning, by enemies, and the like, but hee cannot giue in euidence iustifiable waste, as to repaire the house, or the like. (e) If one doth waste, and before the action brought the Lessee repaireth it, and after the Lessor bringeth an Action of waste, and the Lessee pleade Quod non fecit vastum, hee cannot giue in euidence the especiall matter. 14.53.a.5 Co:119.b. (d) 12.H.8.1.19.E.3. waste 30.20.E.3.waste.32. (e) 10.Eliz.Dier.276. 2.Mar.Dier.212.

If two men be bound in a bond ioyntly, and the one is sued alone, he may plead this matter in abatement of the Writ, but he cannot plead Non est factum, for it is his Deed, though it bee not his sole Deed. (f) See in Whelpdales case, where a man may safely plead Non est factum and where not, and the former bookes that treat of that matter well reconciled. (f) Lib.5.fo.119. Whelpdales case. 7.E.4.5.7.E.6.Br.Non est fact.14 H.7.15. 14.H.8.28.Pl Com. Dine & Man.case. 36.H.8.Dier.59.2.Mar. Dier.112.1.Eliz.Dier.167.

(g) Upon Plene administrauit pleaded by an Executor, Et issint riens inter maines, if it bee proued that he hath goods in his hands which were the Testatours, he may giue in euidence that he hath paid to that value of his owne mony, and need not plead it specially. (g) Hill.10 H 8.Rot. 323.in Comm banco. Et Mich.6.E.6.in Com.banco Bendloes. 7 H.5.9. 6.H.7.10. 34.E.3. Droit. 29. 9 E 3.32. 8.E.3.24. 33.E.3. Verd.18.H.6.24 39.H.6.38. 18.E.3.19. Pl.Com.81. 173.21.H.7. 76. 16.Keilw.21.E 4.11. 22.E.4.45. 13.H.7.13. Stanf.Pl.Cor.15. 22.Ass.55. 37.H.6.21.

In an Assise if the Tenant pleade Nul tort nul disseisin, he cannot giue in euidence a Release after the Disseisin, but a release before the Disseisin he may, for then there is no Disseisin vpon the matter.

In a Writ of Right if the Tenant ioyne the Mise vpon the meere right, he cannot giue in euidence a collaterall warranty, for he hath not any right by it, and therefore it ought to haue beene pleaded.

Of this learning you shall read plentifully in our bookes, and in my Reports, This little taste shall here suffice to make the Reader capable of the rest. Regularly whensoeuer a man doth any thing by force of a warrant or authority, he must plead it,

But all that hath been said must be vnder two cautions. First, that whensoeuer a man cannot haue aduantage of the especiall matter by way of pleading, there he shall take aduantage of it in the euidence. For example, the rule of Lawis, that a man cannot iustifie in the killing or death of a man, and therefore in that case, he shall be receiued to giue the especiall matter in euidence, as that it was Se defendendo, or in defence of his house in the night against theeues and robbers, or the like.

Secondly, that in any action vpon the case, Trespasse, Battery, or of false imprisonment against any Iustice of peace, Maior, or Bailife of City or Towne corporate, Headborough, Port-reue, Cõstable, Tithingman, Collector of Subsidy or Fifteen, in any his Maiesties Courts in Westminster, or elsewhere cõcerning anything by any of them done by reason of any of their offices aforesaid, and all other in their aide or assistance, or by their commandement, &c. they may plead the generall issue, and giue the speciall matter for their excuse or iustification, in euidence. 7.Ia.ca.5.

In an Action of trespasse or other suit against any person for taking of any Distresse or other Ie doing by force of the Commission of Sewers, the Defendant in any such Action shall and may make Anowry, Conusance, or Iustification generally, that it was done by authority of the Commission of Sewers for Lotte or Taxe assessed by that Commission, &c. and the Plaintife shall reply he did it of his owne wrong without such cause. And both these acts were made for auoiding of prolixity and captiousnesse of pleading, tending to the great charge and danger of Officers and Ministers of Iustice, &c. 23.H 8.ca.5.

Euidence, *Euidentia.* This word in legall vnderstanding doth not only containe matters of Record, as Letters Patents, Fines, Recoueries, Inrolments, and the like, and Writings vnder seale, as Charters and Deeds, and other writings without seale, as Court Rolles, Accounts, and the like, which are called Euidences Instruments, but in a larger sense it containeth also Testimonia, the Testimony of witnesses, and other proofes to be produced and giuen to a Iury, for the finding of any issue ioyned betweene the parties. And it is called euidence, because thereby the point in issue is to be made euident to the Iury. Probationes debent esse euidentes, (id est) perspicuæ & faciles intelligi. But let vs now returne to Littleton.

¶ *Ou a auter iour que le Plaintife suppose.* (g) As if the Trespasse were done the fourth of May, and the Plaintife alledgeth the same to be done the fifth of May, or the first of May, when no trespasse was done, yet if vpon the euidence it falleth out, that the Trespasse was done before the Action brought, it sufficeth; and this is warranted by Littleton, who speaketh indefinitely, that the Iury may finde the Defendant guilty at another day then the Plaintife suppoſeth. (g) 19.H.6.47. 5.E. 4 5. 21.E 4.66.

¶ *Et a tiel effect.* Here is to be obserued, That the Law of England respecteth the

effect and substance of the matter, and not every nicity of forme or circumstance, Qui hæret in litera, hæret in cortice, & apices iuris non sunt iura.

Sect. 486.

¶ Item si home soit disseisie, et le Disseisor deuie seisie, &c. et son fits et Heire est eins per discent, et le Disseisee enter sur lheire Disseisor, le quel entrie est vn disseisin, &c. si lheire port Assise ou Briefe de Entre en nature de Assise, il recouera.

ALso if a man be disseised, and the disseisor dyeth seised, &c. and his son and heire is in by discent, and the Disseisee enter upon the heire of the Disseisor, which entrie is a Disseisin, &c. if the heire bring an Assise or a Writ of Entrie in nature of an Assise, hee shall recover.

¶ AND the reason hereof is, for that in the Writ of Right mentioned in the next Section the charge of the grand Assise upon their Oath is upon the meere right, and not upon the possession.

Sect. 487.

¶ CAR *si le heire le Disseisor, &c.* Here is a diuersity to bee obserued concerning that which hath been said, when the possession shall draw the right of the land to it, and when not. And therefore when the possession is first, & then a right commeth thereunto, the entry of him that hath right to the possession shall gaine also the right, which, as before it appeareth in those cases there put, followeth the possession, and the right of possession draweth the right unto it, but when the right is first, and then the possession commeth to the right, albeit the possession be defeated, (as here in Littletons case it is by the heire of the Disseisor) yet the right of the Disseisee remaineth.

50.E.3.7.

Vid.Sect.447.

5.Ass.1.10.Ass.16.

¶ *Briefe Dentrie en le Per.* A. dyeth seised, and the land discendeth to B. his sonne, before he entreth, an estranger abateth and dyeth seised, B. entreth, against whom the heire of the Abator recouereth in an Assise, B. may haue a Writ of Mort-dancester

¶ MEs si lheire port Briefe de droit enuers le Disseisee il serra barre, pur ceo que quant le graund Assise est iure, lour serement est sur le mere droit, et nemy sur le possession. Car si iheir le Disseisor suist vn Assise de Nouel disseisin, ou briefe Dentre en natur dassise, et recouerast vers le Disseisee, et suist execution, vncore poit le Disseisee auer briefe Dentre en le Per enuers luy, de le disseisin fait a luy per son pere, ou il poit auer enuers lheire briefe ô droit.

BUt if the heyre bring a Writ of Right against the Disseisee, he shall bee barred, for that when the graund Assise is sworne, their Oath is vpon the meere right, and not vpon the possession: For if the Heyre of the Disseisor sue an Assise of *Nouel disseisin*, or a Writ of *Entrie* in nature of an Assise, and recouer against the Disseisee, and sueth execution, yet may the Disseisee have a Writ of *Entrie* in the *Per* against him, for the Disseisin made to him by his father, or he may have against the heire a writ of Right.

dancester, and recouer the land against him. And if the Disseisin had beene done to A. &c. then after the recouery in the Assise, B. should haue had a Writ of Entrie in the Per, because the heire that is in by discent is in the Per.

Sect.488.

¶ Mes si le Heyre doit recouer enuers le Disseisee en le case auandit, per brē de Droit, donque tout son droit serroit clerement ale, pur ceo que iudgement finall serroit done enuers luy, que serroit encounter reason lou le Disseisee ad l' pluis meere droit, &c.

BVt if the Heire ought to recouer against the Disseisee in the case aforesaid by a Writ of Right, then all his right should be cleerely taken away, for that iudgement finall shall bee giuen against him, which should bee against reason where the Disseisee hath the more meere right.

¶ *Iudgement final.* The forme whereof you shall see in the last Section of this Chapter.

¶ *Que serra encounter reason.* Argumentum ab inconuenienti. V.Sect.87.&c.

Sect.489.

¶ ET saches mon fits que en briefe de Droit apres ceo q̄ les quater chiualers ont eslie le grand Assise, donques il nad pluis greinder delay que en vn briefe de Formedon, apres ceo q̄ les parties sont a issue, &c. et si le mise soit ioyne sur le Battaile, donques il ad meinō delay.

ANd know (my sonne) that in a Writ of Right after the foure Knights have chosen the grand Assise, then he hath no greater delay then in a Writ of *Formedon*, after the parties bee at issue, &c. And if the Mise bee ioyned vpon battaile, then hee hath lesser delay.

¶ B *Attaile.* See for this word in the last Section of this Chapter.

¶ *Issue, &c.* Or Demurrer, which is an Issue in Law.

Sect.490.& 491.

¶ ITem release ō tout l' droit, &c. en aleun case est bone, fait a celuy que est suppose tenāt en Ley, coment que il nad riens en les Tenements. Sicome en Præcipe quod reddat, si le Tenāt aliena la terre pendant le briefe, et puis le demaundant releſſa a luy

ALso a release of all the right, &c. in some case is good, made to him which is supposed Tenant in Law, albeit he hath nothing in the Tenements. As in a *Præcipe quod reddat*, if the Tenant alien the land hanging the Writ, and after the demandant releaseth

luy tout ſon droit &c. cel releaſe eſt bone, pur ceo que il eſt ſuppoſe deſtre tenant per le ſuit del Demandant, et vncore il nad riens en la Terre al temps de Releaſe fait.

to him all his right, &c. this Releaſe is good, for that he is ſuppoſed to be Tenant by the ſuit of the Demandant, and yet hee hath nothing in the land at the time of the Releaſe made.

Sect. 491.

CEſt meſme le manner eſt, ſi cõ Præcipe quod reddat le tenant vouche & le Vouchee ent en le Garrantie, ſi apres le Demandant releſſa al vouchee tout ſon droit, ceo eſt aſſets bone, pur ceo que l'Vouchee apres ceo que il auoit enter en le Garrantie, eſt Tenant en Ley al Demandant, &c.

IN the ſame manner it is in a *Præcipe quod reddat*, the tenãt vouch, and the Vouchee enters into warranty, if afterward the Demand. releaſe to the vouchee al his right, this is good enough, for that the Vouchee after that he hath entred into Warranty is Tenant in Law to the Demandant, &c.

CHere it doth appeare, That there is a Tenant in Déed and a Tenant in Law, and Littleton in this and the next Section putteth two examples of Tenants in Law, viz (h) the Tenant to a Præcipe after alienation, and of the Vouchée, whereof ſomewhat hath beene ſaid before.

(h) 10.E.4.13. 12.Aſſ.41. 22.Aſſ.13. 23.E.3.21. 25.E.3.40. 38.E.3.10.11. 7.E.3.6. 19.E.3 tit. Reſceit. 34.E.3.tit. Reſceit. 9.E.4.16. 39.H.6.40. 17.Aſſ.24. 8.H.7.5. 20.Aſſ.2. 14.E.3. Procedendo 4. 9.E.3.17. 32.E.3.Quare Imp.2. Dyer. 17.Eliz.341. Sect.447.

* Vide quant Sect.447.

And it is obſeruable, That Littleton ſaith, That in both caſes he is Tenant in Law to the Demandant, and yet he hath nothing in the Land. And therefore if after the Vouchee hath entred into warranty, and become Tenant in law, an Anceſtor collateral of the demandant releaſeth to the Vouchée with warranty, he ſhal not plead this againſt the Demandant, for that the Releaſe by the Eſtranger is voide, which beſides the authorities before vouched, appeareth by Littleton himſelfe, * for hee ſaith, That he is Tenant in Law to the Demandant, whereby he excludeth, that he is Tenant in reſpect of any Eſtranger.

Sect. 492.

CNota, there bée two kind of Actions, viz. one that concern the Pleas of the Crowne, Placita Coronæ, or Placita Criminalia, another that concerne Common Pleas, Placita Communia ſeu Ciuilia Of that which concerneth Pleas of the Crowne, Littleton ſpeaketh hereafter in this Chapter. Of Actions concerning Common Pleas, Littleton ſpeaketh in this place. And theſe are threefold (that is to ſay) Reall, Perſonall, and Mixt, Placitorum aliud perſonale, aliud reale, aliud mixtum. Or Actionum quædam ſunt in

Glan.li.1.ca.1. Bract.li.3. fo.101. Brit fo.71. Flet. li.1.ca.15.& 16.

f.508.

Mir.ca.2.Sect.1.Bract. vb.ſup. Flet.li.1.ca.1.

CItem quant al releales dactions reals et perſonals, il eſt iſſint que aſcuns actions ſont mixt en le realty et en le perſonaltie, ſicome vn action de Waſte ſue enuers tenant a terme de vie, ceſt action eſt en le realtie, pur ceo que le lieu Waſte ſerra recouer. Et auxy en le per-

ALſo as to releaſes of Actions Realls, and Perſonals it is thus. Some actiõs are mixt in the realty & in the perſonaly, as an action of waſte ſued againſt Tenant for life, This Action is in the Realtie, becauſe the place waſted ſhall bee recouered, and alſo in the Perſonaltie, becauſe

perſonaltie, pur ceo que treble damages ſerront recouers p̄ le tortious Waſt fait p̄ le tenant, & pur ceo en ceſt action, vn releas d'actions reals eſt bon plee en barre, et iſſint eſt vn releas d'actions perſonals.

treble damages ſhall bee recovered for the wrongfull waſte done by the Tenant; And therefore in this action a releaſe of actions reals is a good plea in barre, and ſo is a Releaſe of actions perſonals.

Rem, quædam in Perſonam, & quædam mixtæ. And generally, Actio is deſined. (i) Actio nihil aliud eſt quam ius proſequendi in iudicio quod ſibi debetur. Or Action neſt auter choſe que loiall demande de ſon droit.

(i) Vide Sect.444. Bract.lib.3 fol.98. Fleta li.1.cap.15. Mirror cap.2.Sect.1.

(k) And by the releaſe of all Actions, cauſes of action be releaſed, but within a ſubmiſſion of all actions to arbitrement, cauſes of action are not contained.

(k) Lib.8.153.Althams caſe.35.H.8.Dyer 57. 5.Mar.217.Vide 36.H. 6.8.Vid 42.E.3.22.23.

¶ *Tenant pur vie.* And ſo it is if it be brought againſt tenant for yeares, becauſe it agreeth with the reaſon of Littleton here rendred, viz. that the place waſted ſhall be recouered, and therefore ſoundeth in the realty.

¶ *Auxy en le perſonaltie pur ceo que treble damages ſerra recouers,* which doe ſound in the perſonaltie. Wherefore Littleton concludeth, that in an action mixt a Releaſe of all actions reals is a good barre, and ſo is a Releaſe of all actions perſonals.

And here is to be obſerued a diuerſity betweene the act of the party, & an act in Law, for a man by his owne act cannot alter the nature of his action, and therefore if the Leſſee for life or Leſſee for yeares doe waſte, now is an action of waſte giuen to the Leſſor, wherin he ſhall recouer two things, viz. the place waſted, and treble damages, in this caſe if the Leſſor releaſe all actions realls, he ſhall not haue an Action of Waſte in the perſonalty only. And if he releaſe all Actions perſonals, he ſhall not haue an action of Waſte in the realty onely.

(l) And ſo it is if the Leſſee doth Waſte, and after ſurrendreth to the Leſſor his eſtate, and the Leſſor accept thereof, the Leſſor ſhall haue an action of Waſte.

(l) 15.H.6.66 14.H. 6.14. 11.R.2.Waſt.99. 14 H.8.14. 23.H.8.Br. Waſt.138

But by act in Law the nature of the action may be changed, as if a man make a Leaſe pur terme dauter vie, and the Leſſee doth waſte, and then Ceſty que vie dyeth, an Action of Waſte ſhall lye for damages onely, becauſe the other is determined by act in Law.

And againe, hereupon is another diuerſity to be obſerued, that in caſe when an action is well begun, and part of the Action determineth by act in Law, and yet the like action for the reſidue is giuen, there the writ ſhall not abate, but proceed. But where by the determination of part the like action remaineth not for the reſidue, there the action well commenced ſhall abate. As if an action of Waſte be brought againſt tenant pur terme dauter vie, and hanging the Writ, Ceſty que vie dyeth, the Writ ſhall not abate, but the Plaintife ſhall recouer damages only, becauſe if Ceſty que vie had died before any action brought, the Leſſor might haue an action of Waſte for the damages: So if an Eiection firme be brought, and the terme incurreth hanging the Action, yet the Action ſhall proceed for damages onely, becauſe an Eiectione doth lye after the terme for damages onely. But if tenant pur auter vie bring an Aſſiſe, and Ceſty que vie dieth, hanging the Writ, albeit the Writ were well commenced, yet the Writ ſhall abate, becauſe no Aſſiſe can be maintainable for damages onely.

11.H.6.43. 9.E.4.50. 24.E 3.72. 18.E.3.28. 9 H.6.30.

So if an Action of Waſte be brought by Baron and Fem in remainder, in eſpecialtaple and hanging the Writ the wife dieth without iſſue, the writ ſhall abate, becauſe euery kind of Action of Waſte muſt be ad exhæredationem.

2.H.4.22. 6 E.2. briefe 8.7

If a Writ of Annuity bee brought, and the Annuity determineth hanging the Writ, the Writ faileth for euer, becauſe no like Action can be maintained for the Arrerages only but for the Annuity and Arrerages,

34.H.6.10. 9.E.4.39. 14.H.7.31 18.E 3. Scire facias 10.

But where damages only are to be recouered, there albeit by act in Law, the like Action lyeth not afterwards, yet the Action well commenced ſhall proceed, (m) as if a Conſpiracy be brought againſt two, and one of them dieth hanging the Writ, it ſhall proceed.

(m) 22.R.2.briefe 888. 18.E.4.1.

And in an Iſſiſe of Nouel diſſeiſin, a Writ of Annuity, Quare impedit, and other mixt actions, a releaſe of actions reals is a good Plea, and ſo it is of a releaſe of actions perſonals.

2.H.4 13. 9.H.6.57.

But if three Joyntenants be diſſeiſed, and they arraigne an Aſſiſe, and one of them releaſe to the Diſſeiſor all actions perſonals, this ſhall barre him, but it ſhall not barre the other Plaintife, for hauing regard to them the realty ſhall bee preferred, & omne maius trahit ad ſe minus dignum (n) And in a Writ of Ward brought by two, the releaſe of the one ſhall not grieue the other, but ſhall enure to his benefit, for he ſhall recouer the whole Ward, and hold his companion out.

30.H 6.Barre 59.

(n) 30 H.6. vbi ſupra. 45.E 3.fol.6. 18.E.3. fol.56. 21 H.6.18.2.

But here a diuerſity is to be obſerued betweene reall actions, wherein damages are to be

recouered at the Common Law, as in an Assise, &c. and reall actions where damages are not to be recouered by the Common Law, but are giuen by the (o) Statute, for there a release of all actions personals is no barre, as in the Writ of Dower, Entrie sur disseisin in le per, &c. Mordanc', Aiel, &c.

(o) Merton cap.1. in dower-Gloc.cap.1.

Sect. 493.

CEt en Quare impedit, vn releas dactions personals est bone plee & issint est vn release dactions reals, Per Martin, Qd fuit concessum. Hill.9.H.6.57.*

AND in a *Quare impedit*, a release of actions personals is a good plea, and so is a release of actions reals, *Per Martin, Quod fuit concessum. Hill.9.H.6.fol.57.*

9.H.6.57. 22.H.6.27.b.

CThis is an addition to Littleton, which although it be Law, and the Booke truly cited, yet I passe it ouer. But yet note by the way, That a release of actions personals is also a good barre in a Quare impedit, because it is an action mixt.

Sect. 494.

CLe *disseisor bien poet pleder, &c.*

Nota, euery man shall plead such Pleas as are proper for him, and apt for his defence to be pleaded. (q) As a disseisor that hath nothing in the land may pleade a release of actions personals, because damages are to be recouered against him, and therefore for his defence hee may plead it, but a release of actions reals he cannot plead, because he hath no estate in the land, and none shall plead a release of actions reals in an Assise, but the tenant of the land. Et sic de cæteris. But the Tenant in an Assise shall plead a release of actions personals to the Disseisor, for that Plea proueth that the Plaintife hath no cause of action against him.

(q) 11.Ass.5. 18.E.3.2. 23.24. 31.E.3.quare Imp.161. 7.E.3.5. 9.E.3.6. 39.E.3.30. 22.E.3.2. 13.H.4.7. 3.E.2. quare Imp. 44. 38.E.3.30.31. 5.E.3.26. 21.E.3.16.17. 5. .7.34. 8.H.5.14. 22.H.6 28.26. 1.H.7.34. 27.E.3.81. 32.H.6.15.b. 17. 8.25. 2.H.7.14. 13.H.8.13.14. 44.E.3.12. 46.E.3.13. 16.E.4.11. 24.E.3.34. 4.E.4.18. 7.H.4.34. 2.R.2.encombent.4. 33.E.3.quare Imp.194.

CEſ meſme le maner eſt en aſſiſe de Nouel diſſieſin, pur ceo que il eſt mixt en le realtie, et ẽ le perſonalty. Mes ſi vn tiel aſſ. ſoit arraigne enter le diſſeiſor et le tenãt, le diſſeiſor bien poit plede vn releas dactions perſonals, pur barrer laſſ.mes nemy vn releas dactions reals, car nul pledera releas dactions reals en aſſ. forſqꝫ l' tenant.

IN the same manner it is in an Assise of *Nouel disseisin*, for that it is mixt in the realty and in the personaltie; but if such an Assise bee arraigned against the Disseisor, and the Tenant, the Desseisor may well plead a release of actions personals to barre the Assise, but not a release of actiõs reals, for none shall plead a release of actiõs reals in an Assise, but the tenant.

13.H.4.2.a.

If the Disseisée release to the Disseisor all actions reals, and the Disseisor maketh a feoffement in fee, and an Assise is brought against them, the Feoffee shall not plead the release to the Disseisor, for that he is not priuie to the release, for a release of actions shall only extend to Priuies.

If a Disseisor make a lease for life the remainder in fee, and the Disseisée release all actions to the Tenant for life, after the death of Tenant for life, he in the remainder shall not plead the said release.

If the Disseisée release all actions to the Disseisor, and die, this doth barre him but for his life, for after his decease his heire shall haue an action (r) as some haue said. And hereby may appeare a manifest diuersity betweene a release of a Right, and a release of actions.

(r) 19.H.6.33.a.

Sect.

Sect. 495.

ITem en tiels actions reals q̃ couient deſtre ſue enuers le tenant del franktenement, ſi l' tenant ad vn releas dactions reals del demandant fait a luy deuant le briefe purchace, et il plede ceo, il eſt bon plee pur l' demandant adire, que celuy que pleda le plee nauoit rien en le franktenement al temps del releas fait, car adonque il nauoit cauſe dauer aſcun action real enuers luy.

ALſo in ſuch Actions Reals which ought to bee ſued againſt the tenant of the Free-hold, if the tenant hath a releaſe of actions reals from the Demandant made vnto him before the Writ purchaſed, and he plead this, it is a good plea for the Demandant to ſay, that hee which plead the Plea had nothing in the freehold at the time of the releaſe made, for then he had no cauſe to haue an action reall againſt him.

THis is euident enough by that which hath beene ſaid, that a releaſe of all actions reals muſt bee made to him that is Tenant of the Land, becauſe a reall action muſt be brought againſt ſuch a Tenant.

Sect. 496.

ITem en tiel cas ou home poet enter en Terres ou Tenements, et auxy poit auer vn Action real de ceo, que eſt done p la Ley enuers le Tenant, ſi en ceſt caſe le demandãt releſſa al tenant touts maners de actions reals, vncore ceo ne tolle le ỏmandant de ſon entrie, mes le demandant bien poit enter nient contriſteant tiel releas, pur ceo que nul choſe eſt releſſe forſq̃ laction, &c.

ALſo in ſuch caſe where a man may enter into Lands or Tenements, and alſo many have an Action reall for this, which is given by the Law againſt the Tenant, if in this caſe the Demandant releaſeth to the tenãt all maner of Actions reals, yet this ſhall not take the Demandant from his entrie, but the Demandant may well enter notwithſtãding ſuch releaſe, for that nothing is releaſed but the Action, &c.

POet enter. Here it appeareth, That where a man may enter, a Releaſe of all Actions doth not barre him of his right, becauſe he hath another remedy, viz. to enter. And this is agreeable with the authoritie of our (f) Bookes. But where his entry is not lawfull, there a Releaſe of all actions is by conſequence a barre of his right, becauſe he hath releaſed the mean whereby he might recouer his right. As if the Diſſeiſee releaſe all actions to the heire of the Diſſeiſor, which is in by Diſcent, he hath no remedy to recouer the land, but yet the Diſſeiſee hath a right, for that he hath releaſed his action, & not his right, as ſhall be ſaid hereafter in the Chapter of Remitter in his proper place. If the heire of the Diſſeiſor make a feoffment in fee to two, & the Diſſeiſee releaſeth to one of the Feoffees all actions, and he dieth, the Survivour ſhall not plead this releaſe for the cauſes aboueſaid. And hereby alſo againe appeareth another diuerſity betweene a releaſe of a right, and a releaſe of actions.

(f) 18.E.3.34. 19.E.3. Title 35.

It

19.Ass.3.30.E.3.19.6. 19.H.6.4 6. 21.H 7. 23.b. 7.H.6.6.

It is to be obserued when a man hath seuerall remedies for one and the selfe same thing, be it reall, personall, or mixt, albeit he releaseth one of his remedies, he may vse the other.

Sect.497.

¶ En meisme le maner est de choses personals, sicom home a tort prent mes biens, si ieo release a luy touts actions personals, vncore ieo puisse p le ley prender mes biens hors de son possession.

IN the same maner is it of things personall, as if a man by wrong take away my goods, if I release to him all actions personals, yet I may by the Law take my goods out of his possession.

This of it selfe is euident.

Sect.498.

Glanuil.lib.10.cap.13. ¶ *Briefe de detinue.* Breue de detentione dicitur à Detinendo, because Detinet is the principall word in the Writ. And it lyeth where any man comes to goods either by deliuery, or by finding. In this Writ the Plaintife shall recouer the thing detained, and therefore it must bee so certaine as it may be knowne, and for that cause, it lyeth not for money out of a bagge, or chest, and so of corne out of a sacke, and the like, these cannot be knowne from other. (t) A man shall haue an action of Detinue of Charters which concern the inheritance of his land if hee know the certainty of them, and what land they concerne, or if they be in Bagge sealed, or Chest locked, though he knoweth not the certainty of them: and it is good policie, (if possibly he can) in that case to declare of one Charter in especiall, (u) and then the Defendant shall not wage his Law. (x) An action of Detinue for Charters doth sound in the realty, for therein summons and seuerance lyeth, and in Detinue of goods a Capias doth lye, but for Charters in especiall a Capias lyeth not, and yet a Release of actions personals in a Writ of Detinue of Charters is a good barre.

¶ Quary si ieo ay ascun cause dauñ briefe de Detinue de mes biens vers vn auter coment q̃ ieo release a luy touts actions personals, vncor ieo puisse per le ley prendre mes biens hors d̃ son possession, pur ceo que nul droit d̃ les biens est relesse a luy, mes solement laction, &c.

ALso if I haue any cause to haue a a Writ of Detinue of my goods against another, albeit that I release to him all actions personals, yet I may by the Law take my goods out of his possession, because no right of the goods is released to him, but only the action, &c.

41.E.3.2.

(t)41.E.3.2. 8.H.6.18. 28.29. 21.E.3.28. 3.H.6.19. 30.H.6.4. 9.H.6.18.

(u)10.H.6 20. 21.H.6.1. 14.H.6.4. 14.H.4.23. 24.27.

(x)20.H.6.45. 19.E.3. Seuerance 14. 31 E.3. ib 32. 42 E.3.13. 40.E.3.25.

Sect.499.

¶ *Per cause del Statute.* That is to say, the Statute of 4.H.4.c.7 and 11.H.6.ca 4. 3.

¶ *Car sil voet pleder le release generalment.* Here it appeareth, that when the Statute had giuen the action reall a-

¶ Item si hom soit disseisie & le disseisor fait feoffment a diuers persons a son vse, et le disseisor continualment prist les profits, &c. et le disseisee relessa a luy touts

ALso if a man bee disseised, and the disseisor maketh a feoffment to diuers persons to his vse, and the disseisor continually taketh the profits, &c. & the disseisee release

touts actions reals, et puis il suist vers luy vne Dentre en nature dassise p cause de lestatute, pur ceo que il prent les profits, &c. Quære, coment le disseisor serra aide per le dit releas: car sil voile pleder le releas generalment, donques le demandant poit dire q̃ il nauoit riens en le franktenement al temps del releas fait, & sil pleda releas specialment, donques il couient conustr̃ vn disseisin, et donques puit le demandant enter en le tre, &c. p son conusans de l' disseisin, &c. Mes peraduenture p especial pleader il luy poit barr̃ ô laction que il suist, &c. coment le demandant poit enter.

to him all actions reals, and after hee sueth against him a Writ of entrie in nature of an assise by reason of the statute, because hee taketh the profits, &c. *Quære*, how the disseisor shall bee ayded by the said release, for if hee will plead the release generally, then the demandant may say that hee had nothing in the freehold at the time of the release made, and if hee plead the release specially, then he must acknowledge a disseisin, and then may the demandãt enter into the land, &c. by his acknowlegement of the disseisin, &c. but peraduenture by speciall pleading he may barre him of the action which hee sueth, &c. though the demandant may enter.

gainst the perno: of the profits, it enableth him to take and pleade a Release of all actions reals, and yet hee hath nither Ius in re, no: Ius ad rem, which point is worthy of obseruation fo: manifestation of the equity of the Law. 3.H.7.2.

¶ *Donques il couient conustre vn disseisin, &c.* In a Writ of Dower the Tenant pleaded that before the Writ purchased A. was seised of the land, &c. vntil by the Tenant himselfe hee was disseised, and that hanging the Writ A. recouered against him, &c. iudgement of the Writ, and adiudged a good plea, in which plea the Tenant confessed a Disseisin in himselfe. 15.E.4.4.b.

¶ *Donques poit le demandant enter.* He might hee haue done in this case that Littleton putteth, albeit the Tenant confessed no disseisin. And therefore it is no preiudice to the Tenant to confesse a disseisin in himselfe, &c. and then, as Littleton here holdeth, the action shall be barred.

But the reader is to obserue, that now by the Statute of 27.H.8.cap.10. which execute the possession to the vse, all the Statutes against Cesty que vse, o: pernor of the profits haue lost their force. 28.H.8.Dier.32. 27.H.8.ca.10.

Sect. 500.

¶ Itẽ si home suist appeale ô felony del mort son ancester enuers vn auter, coment que lappellant relessa al defendant touts maners dãctions reals et plonals ceo ne aidera my le defendãt, pur ceo que cest appeal nest pas

ALso if a man sue an appeale of felony of the death of his ancester against another, though the appellant release to the defendant all manner of actions reall & personall, this shall not aide the defendant, for that this appeale is not

¶ OVr Author having spoken of Common Pleas, now treateth of certaine Pleas Criminall, o: Pleas of the Crowne, whereof it is said, (a) Item, criminalium alia maiora, alia minora, alia maxima, secundum criminum quantitatem; Sunt enim Crimina Maiora & dicuntur capitalia eò quod vltimum inducunt supplicium, &c. Minora vero, quæ fustigationem inducunt, vel pœnam pilloralem, vel tumboralem vel carceris xv. b. (a) Bract. lib.3. fo.101.b.

carceris inclusionem, &c,

(b) Criminalium quædam sententialiter mortem inducunt, quædam vero minime.

(b) Flet.lib.1.cap.15.

(c) De peche est briefe division, car est mortal ou venial solonque ceo que appiert es paines. And that crime is called mortall or corporall: mortall, because it deserueth death; & such crimes are called venialls, as may be redéemed or satisfied by some other punishment than by death.

(c) Mir.c.1.Sect.4.&c.4. des paines en diuers manners.

¶ *Appeale de Felonie.* (x) Appellum signifieth Accusatio, an Accusation, and therefore to appeale a man is as much as to accuse him, and in (y) ancient Bookes he that doth appeale is called Accusator, and is peculiarly in legal signification applyed to Appeales of three sorts. First, of wrong to his Ancestor, whose heire male he is, and that is onely of death, whereof our Author here speaketh. The second is of wrong to the husband, and is by the wife only of the death of her husband to be prosecuted. The third is of wrongs done to the Appellants themselues, as Robbery, Rape, and Mayhem. The word Appellum is deriued of Appeller, to call. because Appellans vocat reum in iudicium. He calleth the Defendant to iudgement, and the Plaintife is called the Appellant.

(x) Mir.c.1.2.Sect.7. Bract.lib.3.fol.137.Brit. ca.22.23. Flet.li.1.ca.31, 32,33.

(y) Glanuil lib.7.cap.9. Et lib.14 cap.1.& 3.

¶ *Appeale.* Appellatio is a remouing of a cause in any Ecclesiasticall Court to a Superior, but of this there néedeth no speech in this place.

24.H.ca.12. 3 El.ca.1.

¶ *De mort.* Appeale of death is of two sorts, of Murder & of homicide. Murder is when one is slaine with a mans will, and with malice prepensed or forethought. Homicide as it is legally taken is when one is slaine with a mans will, but not with malice prepensed. Chance-medley or Per infortunium, is when one is slaine casually, and by misaduenture, without the will of him that doth the act, whereupon death insueth, but of this no Appeale doth lye. Murder commeth of the Saxon word Mordreu.

Lamb.expos.verb.Estimatio. Flet.lib.1.ca.42. Houed.fo.344.

Were is an old Saxon word sometimes written Wera, and signifieth the price of the life of a man, Estimatio capitis, that is, so much as one paid for the killing of a man, by which it appeareth, that such gouernment was in those dayes, as slaughters of men were most rarely committed, as Master Lambard collecteth. And you shall not reade of any insurrection or rebellion before the Conquest, when the view of Frankpledge and other ancient Laws of this Realme were in their right vse.

Roffa.

¶ *Mes sil release al Defendant touts manners d' actions, &c.* And the reason is, for that then all Actions as well criminall as reall, personall and mixt, be released. But a release of all actions reall and personall cannot barre an Appeale of death, because that Release extendeth to common or ciuill actions, and not to actions criminall: but Releases of all actions criminall or mortall, or concerning Pleas of the Crowne, are good barres in an Appeale of death, and so the (&c.) in the end of this Section is well explained.

21.H.6.16.

* Quere diese, car semble q̄ appeals nē plea del corone

Sect.

Sect. 501.

¶ Item en appeale de Robberie, si l' defendant voil' pleader vn release de l'appellant de touts actions personals ceo semble nul Plee. Car action ỏl Appeale, lou l'apellee aũa iudgement de mort, &c. est pluis hault que action personal est, et nest pas proprement dit action personal: Et pur ceo si le defendant voiloit plead vn release del Appellant de barrer luy d'appeale, en cest case il couient dauer vn release ỏ touts mañs dappeals, ou touts manners dactions, cõe il semble, &c.

ALso in an Appeale of Robberie, if the Defendant will plead a release of the Appellant, of all actions personals, this seemeth no Plea: for an action of Appeale where the Appellee shall haue iudgement of death, &c. is higher than an action personall is, & is not properly called an action personall, and there if the Defendant wil plead a release of the Appellant, to barre him of the Appeale, in this case hee must haue a release of all manner of Appeales, or all manner of Actions, as it seemeth, &c.

¶ *Robberie.* Roberia properly is when there is a felonious taking away of a mans goods from his person: and it is called Robbery, because the goods are taken as it were De la Robe, from the Robe, that is, from the person: but sometime it is taken in a larger sense. 22.Ass.39. W.1.cap.20.

¶ *Iudgement de mort, &c.* By this (&c.) is implyed Appeales of Rape, of Arson or Burning, of Felony or Larceny, for therein also is iudgement of death, and are within our Authors reason.

¶ *Come il semble, &c.* It is to be vnderstood, That, first, a release of all actions criminall, mortall, or concerning Pleas of the Crown. Secondly, a release of all Actions generally. Thirdly, a release of all Appeales. And lastly, a release of all Demands are good barres in all these kinds of Appeales. V.Sect.508. xv.287. b.

Sect. 502.

¶ MEs en Appeale de Mayhem vn release de touts manners dactions personals est bone plee en Barre, pur ceo que en tiel action il ne recouera forsq; damages, &c.

BVt in Appeale of Mayhem a release of all manner of actions personals is a good plea in barre, for that in such an action hee shall recouer nothing but damages.

¶ *Mayhem* Mahemium, membri Mutilatio, or Obtruncatio, commeth of the French word Mehaigne, & signifieth a Corporall Hurt, whereby he loseth a Member, by reason whereof hee is lesse able to fight; as by putting out his eye, * beating out his foretæth, breaking his scull, striking off his arme, hand, or finger, cutting off his legge or foot, or whereby he loseth the vse of any of his said members. Mir.ca.1.Sect.9.Glanvil.14.ca.7.Bract.lib.3.Tract 2.ca 24.Britfo.48.ca.25.Flet.lib.1.ca.38.Stanf.Pl.Corfo.38.b.

* or how the beating out a mans foretæth makes him vnable to fight 28.E.3.94. 8.H.4.21.

¶ *Damages, &c.* V.Sect.194.

¶ *Release de touts manners Actions Personals est bone Plea, &c.* And the reason is, for that euery Action wherein damages onely are recouered by the Plaintife, is in Law taken for an Action personall. 21.H.6.16.

Sect.

Sect.503.

V.li.11.fo.39.41.in Mercalfes caſe vpon what iudgements and awards a Writ of Error doth lie.

¶ *Briefe de Error.* This Writ lyeth when a man is grieued by any error in the foundation, procéeding, iudgment, or execution, and thereupon it is called Breue de errore corrigendo. But without a iudgement or an award in nature of a iudgment no Writ of Error doth lie, for the words of the Writ be, Si iudicium redditum ſit: and that iudgement muſt regularly be giuen by Iudges of Record, and in a Court of Record, & not by any other inferiour Iudges in baſe Courts, for thereupon a writ of falſe iudgement doth lye. In this caſe of Vtlawry vpon Proceſſe the iudgement is giuen (in the County Court, which is no Court of Record) by the Coroners (ſauing in London iudgement is giuen by the Recorder, and not by the Maior, who is Coroner by the Cuſtome of the City:)

Li.5.fo.111.Foxleyes caſe Li.7.fo.11.12.Ientlemans caſe.

15.Eliz.Dyer 317.

for after the Defendant is Quinto exactus, and maketh default, the iudgement is, Ideo vlagetur per iudicium Coronatorum, and in London, Per iudicium Recordatoris: ſo as by the outlawry the Plaintife recouers nothing, but the King taketh the whole benefit therof, for the Law did intend, that the Defendant would rather appeare and anſwer the Plaintife, &c. than to forfeit all his Goods and Chattels, Debts and Duties to the King, by his default and contumacie. But Littleton is to be intended, That the Sherife doe returne the Exigent whereby the Outlawry appeares of Record, or that the Outlawry be remoued by Certiorari, for before that time that the Outlawry appeare of Record, the Defendant doth not forfeit his goods nor the Plaintife can be diſabled, nor any Writ of Error doth lye in that caſe. And this is the cauſe that the goods of Outlawes cannot be claimed by Preſcription, becauſe they are not forfeited vntill the Outlawry appeare of Record. Vide Sect.197. where it appeareth by Littleton, That the Plaintife cannot be diſabled by Outlawry, vnleſſe it appeareth of Record.

Lib.9.fo.119.8.Zanchars caſe.

28.Aſſ.49. 12.E.3.Vtlag.3. 38 E.3.13.Mich. 4.& 5.Eliz. Dyer fo.222. Vid.Sect.197.

¶ *Car per le dit Action il recouera rien en le perſonaltie.* Hereupon is to be obſerued a diuerſity, when by the Writ of Error the Plaintife ſhall recouer, or be reſtored to any perſonall thing, as Debt, Damage, or the like, for then by the reaſon that Littleton here yeeldeth, the releaſe of all actions perſonals is a good plea, for that the Plaintife is to recouer, or to be reſtored to ſomething in the perſonalty. And ſo likewiſe when land is to be recouered, or to be reſtored in a Writ of Error, a Releaſe of all actions reals is a good barre. But where by a Writ of Error the Plaintife ſhall not bee reſtored to any perſonall or reall thing, then a releaſe of all actions reall or perſonall, is no barre, and therefore Littleton here putteth his caſe with great caution: If a man (ſaith he) by Proceſſe vpon the Originall be outlawed, there indeed he ſhall be reſtored to nothing in the perſonalty againſt the Plaintife. But where by the Outlawry he forfeited all his Goods and Chattels to the King, he ſhall be reſtored to them; alſo thereby he ſhall be reſtored to the Law, & to be of ability to ſue, &c. But if the Plaintife in a perſonall action recouer any debt, &c. or damages, and bee outlawed after iudgement, there in a Writ of Error brought by the Defendant vpon the principall iudgement, a releaſe of all actions perſonals is a good plea. And ſo it is where a Iudgement is giuen in a reall action, a releaſe of all actions reals is a good barre in a Writ of Error brought thereupon.

8.H.4.6.

If the Tenant in a reall action releaſe to the Defendant after recouery his right in the land, he ſhall not haue a Writ of Error, for that he cannot be reſtored to the land. 9 H.6.47.

And ſo it is if debt, &c. or damages be recouered in a perſonall action by falſe Verdict, and the Defendant bringeth a Writ of Attaint, a (a) releaſe of all actions perſonalis is a good barre of the Attaint, for thereby the Plaintife is to be reſtored to the debt, &c. or damages which he loſt, the like Law is if a Iudgement be giuen vpon a falſe Verdict in a reall action, a releaſe of all actions reals is a good barre in an Attaint. For both the Writ of Error, and the Writ of Attaint, doe inſue the nature of the former action, &c. (a) 26.H.8.3.b. 13.E.4. 1.2.

And ſo it is if a Writ of Audita Querela be brought by the Defendant in the former action to diſcharge himſelfe of an execution, a releaſe of all actions perſonals is a good barre, becauſe he is to diſcharge himſelfe of a perſonall execution. 34 H.6.31. 35.H.6.19. 29.Aſſ.35. 47.E.3.6. 24.E.3.37.

¶ *Mes vn releaſe de briefe de error eſt bone plea, &c.* So as in this ſpeciall caſe here put by Littleton, wherin the Plaintife is to recouer or be reſtored to nothing againſt the party, yet for that the Plaintife in the former action is priuy to the Record, a releaſe of a Writ of Error to him is ſufficient to barre the Plaintife in the Writ of Error of the ſuit, and vexation by the Writ of Error. And ſo note that an action real or perſonall doth imply a recouery of ſomething in the realty or perſonalty, or a reſtitution to the ſame, but a Writ implyeth neither of them, which is worthy of obſeruation.

Sect. 504.

¶ Item, ſi home recouer̃ debt ou damages, & il releſſa al Defendant touts maners dactions, uncore il puit loialment ſuer execution per Capias ad ſatisfaciendum, ou per Elegit, ou Fieri facias, car execution per tiel briefe, ne poit eſtre dit action.

ALſo if a man recouer debt or damages, and he releaſeth to the Defendant all maner of Actions, yet hee may lawfully ſue Execution by *Capias ad ſatisfaciendum* or by *Elegit*, or *Fieri facias*: For Execution upon ſuch a writ cannot bee ſaid an Action.

¶ HEre appeareth a diuerſity betweene an Action and an Execution. For regularly an Action is ſaid in his proper ſenſe to continue vntill iudgement bee giuen, and after iudgement then doth Proceſſe of Execution begin and therefore a releaſe of all Actions regularly is (b) no barre of Execution, for the Execution doth beginne when the Action doth end. And therefore the foundation of the firſt is an originall Writ, and doth determine by the Iudgment, and Writs of Execution are called Iudiciall, becauſe they are grounded vpon the Iudgement. Vide Sect.233 8. 39.4.E.3. Attorney 18. 3.H.6.49. 34.H.6.51. (b) 13.H.4.Releaſe 53. 19.H.6.3. 26.H.6.Execution 7.

¶ *Per Cap. ad ſatisfaciendum.* This is a iudiciall Writ for the taking of the body in Execution vntill hee hath made ſatisfaction: where a Capias ad ſatisfaciendum lyeth at the Common Law, and where it is giuen by Statute, you may reade at large in my Reports. Sir William Herberts caſe lib.3.fol. 11.12.

I haue read two ancient Records touching the taking of the body in Execution, where of to my remembrance, I neuer read any touch in our Bookes, yet will I recite them, and leaue them to the iudicious Reader. William de Walton brought an Action of Treſpaſſe of breaking his cloſe againſt Iohn Martin, and vpon not guilty pleaded, he was found guilty and damages aſſeſſed, whereupon iudgement was giuen that the Plaintife ſhould recouer his damages, Et quod prædictus Iohannes capiatur. And the Record ſaith, Quod prædictus Iohannes venit coram Domino Rege & reddidit ſe priſone, & quia conſtat Curiæ per inſpectionem corporis ipſius Iohannis, quod idem Iohannes eſt talis ætatis quod pœnam impriſonamenti ſubire non poteſt, ideo dictum eſt ei, quod eat inde ſine die. Paſch.14.E.3.Rot.106. coram Rege in Theſaur. Surrey.

The other Record is, That Ellen Allot brought an Appeale of Robbery againſt Iohn Boxiſeleke Clarke, Richard Charta, and others, who pleaded not guilty, and were not found guilty: whereupon iudgement was giuen that they ſhould goe quite, Et prædicta Elena pro falſo appello ſuo committatur priſonæ, &c. (for (b) by the Statute ſhe ought to be impriſoned in that caſe for a yeare.) But the Record ſaith, Quia eadem Elena prægnans fuit, & in periculo mortis, ipſa dimittitur per manucaptionem, &c. ad habendum corpus uſque Quind. Michaelis, &c. Mich.42.E.3.Rot.27. coram Rege Cor. in Theſaur. (b) W. 2. cap. 12.

Max.

There be certaine maximes in the Law concerning Executions, as taking some in stead of many. Ea quæ in Curia nostra rite acta sunt, debitæ executioni demandari debent. Parum est latam esse sententiam nisi mandetur executioni. Executio iuris non habet iniuriam, Executio est fructus & finis legis. Iuris effectus in executione consistit. Prosecutio legis est grauis vexatio, executio legis coronat opus. Boni Iudicis est iudicium sine dilatione mandare executioni. Favorabiliores sunt executiones aliis processibus quibuscunque. But now let vs heare what Littleton saith.

¶ *Per Elegit.* This is also a iudiciall Writ, and is giuen by the Statute either vpon a recouery for debt or damages, or vpon a Recognizance in any Court. And it is called a Writ of Elegit, for that according to the Statute that saith, (c) Sit de cætero in electione illius, &c. sequi breue quod Vicecomes fieri faciat, &c. vel quod liberet ei, &c. The words of the Writ bee Elegit sibi liberari, &c. And thereupon it is called an Elegit. By this Writ the Sherife shall deliuer to the Plaintife, Omnia catalla debitoris, (exceptis bobus & aratris carucæ) & medietatem terræ. And this must be done by an inquest to be taken by the Sherife.

(c) W.2.cap.18.

When Littleton wrote, by force of certaine Acts (d) of Parliament, execution might be had of Lands (besides by force of the Elegit) vpon Statutes Merchant, Statutes Staple, and Recognizances taken in some Court of Record, and since he wrote, vpon a Recognizance or Bond taken by force of the Statute (*) of 23.H.8. before one of the Chiefe Iustices, or the Maior of the Staple, and Recorder of London out of Terme, which hath the effect of a Statute Staple. The manner of the Executions vpon Body, Lands, and Goods, appeareth in the Statutes quoted in the margent.

(d) 11.E.1.Stat. de Acton Burnell. 13.E.1.de mercatoribus. 27.E.3. cap.22. Vide Fleta.li.2. cap.57. 25.E.3.53.
(*) 23.H.8.cap.6.

Since Littleton wrote, a profitable Statute hath beene made (e) concerning executions of Lands, Tenements, and Hereditaments, wherby it is prouided that if after such Lands, &c. be had & deliuered in Execution vpon a iust or lawfull title, wherewithall the said Lands, &c. were liable, tied, or bound at such time, as they were deliuered or taken into execution, shall be recouered, deuested, taken, or euicted out of, or from the possession of any such person, &c. before such times, as the said Tenants by Execution their Executors or Assignes shall haue fully leuied their debt and damages. for the which the said Lands, &c. were taken in Execution, then euery such Recoueror, Obligee, and Recognizee, shall haue a Scire facias out of the same Court from whence the former Execution did proceed, against such person or persons as the former Execution was pursued, their Heires, Executors or Assignes, to haue Execution of other Lands, &c. liable and to be taken in Execution for the residue of the debt or damages, Sed opus est interprete.

(e) 32.H.8.cap.5.

Therefore first it is to be knowne, that where the Tenant by Execution hath remedy giuen to him by Law after euiction, there the Statute extendeth not to it, for the Act saith, by reason whereof, the said Recouerors, Obligees, and Recognizees, haue been clerely set without remedy, &c. and the body referreth to the preamble, and the party ought not to haue double satisfaction, one by the former Lawes, and another by this Statute.

Lib.4.fol. 66. Fulwoods case.

And therefore if part of the Land, &c. be euicted from the Tenant by execution, this Statute extendeth not to it, because he should hold the residue, till he be fully satisfied, and he must be contented if all be euicted sauing one Acre to hold that, though it be but a poore remedy: for no new Execution in that case hee can haue vpon this Statute. Therefore if the Conusee hath remedy in prælenti for part, or in futuro for all, or part, this Statute extendeth not to it.

Secondly, If a man bee bound to A. in a Statute of a thousand pounds, and by latter Statute to B. in a hundred pounds, and B. first extendeth, and then A. extendeth and taketh the Land from B. yet B. shall haue no aide of the Statute, because after the extent of A. B. shall re-enioy the Land, by force of his former Execution.

Thirdly, If the wife of the Conusor recouer Dower against the Tenant by Execution, he shall hold ouer, and shall haue no aide of this Statute.

Fourthly, If a man put out his Lessee for yeares, or disseise his Lessee for life, and after knowledge a Statute and Execution is sued against him, and the Lessees re-enter, the Tenant by Execution after the Leases ended, shall hold ouer, and haue no aide of this Statute.

Fiftly, This Statute must not be taken literally, but according to the meaning, therefore where the letter is untill he, &c. or his Assignes shall fully and wholly haue leuied the whole debt or damages: if he hath assigned seuerall parcels to seuerall Assignes, yet all they shall haue the Land, but till the whole debt be paid.

Sixtly, Where the words be, for the which the said Lands, &c. were deliuered in Execution. A Disseisor conuey lands to the King who granteth the same ouer to A. and his heires to hold by fealty, and twenty pound rent, and after granteth the Seignior y to B. B. knowledgeth a Statute,

Statute, and Execution is sued of the Seigniory. A. dieth without heire, & the Conusee entereth, and is euicted by the Disseisee, he shall haue the aide of this Statute, and yet it is out of the letter of the Law, for the Seigniory was deliuered in Execution and not the Tenancy but he was Tenant by execution of those lands, and therefore within the Statute. But the prquisite of a Vellein being euicted is out of the Statute, for hee is Tenant in fee simple thereof, and not Tenant by execution.

Seuenthly, where the words be (deliuered and taken in execution) yet if after the Liberate the Conusee entereth (as he may) so as the land is neuer deliuered, yet is he within the remedy of this Statute, for he is Tenant by execution.

Eightly, where the Statute saith, then euery such Recoueror, Obligee, and Recognizee shall, &c. and saith not, their Executors, Administrators or Assignes, but they are omitted in this materiall place, yet by a benigne interpretation this Statute shall extend to them, because they are mentioned in the next precedent clause of the euiction, and the remedy must by construction be extended to all the persons, that appeare by the Act to be grieued, a point worthy the obseruation.

Ninthly, where the Statute giueth a Scire fac' out of the same Court, &c. if the Record be remoued by Writ of Error into another Court, & there affirmed, the Tenant by Execution that is euicted shall haue a Scire fac' by the equity of this Statute out of that Court, because the Scire fac' must be grounded vpon the Record, Et sic de similibus.

Tenthly, where the Statute giueth the Scire fac' against such person or persons, &c. that were parties to the first Execution, their Heires, Executors or Assignes, &c. this must not bee taken so generally as the Letter is, for if the first Execution were had against a Purchasor, &c. so as nothing was liable in his hands but the Land recouered, if this Land be euicted from Tenant by Execution, no Scire fac' shall be awarded against him, his Heires, Executors or Assignes, but if he hath other lands subiect to the Execution, then a Scire fac' lyeth against him or his Assignes, but not against his Executors, neither in that case can he haue a Scire fac' vpon this Statute against the first Debtor or Recognizor, because it giueth it onely against him, &c. that was party to the first Execution, his Heires, Executors or Assignes. But if there be seuerall Assignees of seuerall parcels of lands subiect to the Execution, one Scire fac' vpon this Statute shall lye against all the Assignes. Sed est modus in rebus. This little taste shall giue a light to the diligent Reader, not only to see into the secrets of this Statute, but to others also of like nature.

And by the Statute of 23.H.8.cap.6. it is prouided that the Obligee, &c. shall haue in euery point against such Recognisor, &c. like Proces, Execution, Commodity & Aduantage in euery behalfe, as hath been had or made vpon the Statute Staple, & vnder such manner and form, as is for the same Statute Staple prouided: by force of which branch, if the Tenant by execution by force of the Act of 23.H.8. be euicted, he shall haue the remedy prouided for Tenants by execution vpon a Statute Staple by the Act of 32.H.8. In like manner by force of that clause of 23.H.8. if the extendors vpon a Statute Staple, &c. doe extend the lands, &c. at too high a rate, the Obligee may pray that the Extendors themselues may take the lands, &c. at that rate, &c. by force of the said Statutes of Acton Burnel, and De Mercatoribus. Also no execution shall be sued against the heire within age.

But note that vpon a Writ of Elegit the Plaintife cannot make any such prayer, because those ancient Statutes doe extend to a Statute Merchant, or a Statute Staple onely and neither to a Recouery of debt or damages, nor to a Recognizance in Court, and so hath it been resolued. (f)

Nota. it appeareth by the Preamble of the said Act of 32.H.8. and by diuers (g) bookes, that after a full and perfect execution had by extent returned and of Record, there shall neuer be anyre-extent vpon any euiction: but if the extent be insufficient in Law, there may goe out a newextent.

(h) If a man haue a Iudgement giuen against him for debt or damages, or be bound in a Recognizance, and dieth his heire within age, or hauing two daughters, and the one within age, no execution shall be sued of the lands by Elegit during the minority, albeit the heire is not specially bound but charged as Terre tenant (i) and so against an heire within age no execution shall be sued vpon a Statute Merchant or Staple nor vpon the Obligation or Recognizance vpon the Statute of 23.H.8. for it is excepted in the Prooces against the heire. Neither if the heire within age indow his mother shall Execution be sued against her during his minority.

Note, that by the Statute (k) of 27.E.2. the Execution of Lands vpon a Statute Staple is referred to the Statute Merchant, and by the Statute De Mercatoribus no Execution shall be had against the heire so long as he is within age.

Also since Littleton wrote, there is a right profitable Statute (l) made against fraudulent Feoffments, Gifts, Grants, &c. Iudgements and Executions, as well of Lands and Tenements,

Qu. for the words of 23.H.8.ca.6: are (like Proces &c. as hath been had or made before this time &c. & that vnder such manner &c. as is prouided &c.) relating to this time past, & no way inabling any thing for the future.

40.E.3.26.b. 44.E.3. fol.10. 2.H.4.17. 15.H.7.15.

to take aduantage

(f) Mich.4.& 5.Ph.& Mar. Bendloes, by all the Iustices of the Common Pleas. 15.E.3. Extent.7.

of a Statute made 9 Iames after the 32.H.8.ca.5:

(g) 15.E.3. Extent.7. 22.E. Recouery in value 22. 31.E.3. Exten.13. 17.E.3.76. 15.E.3. Scire fac.115. 7.H.4.19. 22.Ass 44. 22.E.3.fol. ult. 44.E.3.10. 9.H.7.9. 15.H.7.15. 13.Eliz. Dier.299. 29.H.8. Stat.Merchant Br. 40.

(h) 11.E.3.age 4. 15.E.3.age 95. 24.E.3. 28. 29.Ass.37. 29.E.3. 50. 47.Ass.4. 47.E.3. 7. lib.3.fol.13. Sir William Herberts case. Brooke age 33.

(i) Temp.E.1. Ass.102. 417. 16.H.7.6. Licure dente, 545 Brooke. age 33.

(k) 27.E.3.cap.22.

(l) 13.Eliz.cap.5. Li 3.fo.80,&c. Twynes case. Lib.5.fo.60. Gooches case.

ments, as of Goods and Chattels, to delay, hinder or defraud Creditors and others of their iust and lawfull Actions, Suites, Debts, Damages, penalties, Forfeitures, Heriots, Mortuaries, and Releases, for the exposition of which and other Statutes see the Authorities quoted in the Margent.

Lib.6.fo.18.Pakemans case
Lib.10.fo.56.the Chanc.of Oxfords case.
See the Statutes of 3.H.7 cap.4.& 50.E.3.cap.6.
Mich.12.& 13.Eliz.
Dyer.295. 18.Eliz.351.
Dier.

And it is to be obserued, that the words of the said Act of 13.Eliz. are, Be it therefore declared, ordained, and enacted: and therefore like cases in semblable mischiefe shall be taken within the remedy of this Act, by reason of this word (Declared) whereby it appeareth, what the Law was before the making of this Act. But let vs now returne to Littleton.

¶ *Fieri facias.* This is a Writ mentioned in the said Statute, but is a Writ of Execution at the Common Law. And is called a Fieri facias, because the words of the Writ directed to the Sherife be Quod fieri facias de bonis & catallis,&c. and of those words the Writ taketh his denomination.

W.2,cap.18.

But note that a Capias ad satisfaciendum, is not mentioned in the said Statute, because no Capias ad satisfac' did lye at the Common Law vpon a iudgement for debt, &c. or damages, but only when the originall action was Quare vi & armis,&c. But latter Statutes haue giuen a Capias ad satisfac' where debt,&c. or damages are recouered, as it appeareth at large (m) in Sir William Herberts case, whereunto I referre the Reader.

(m)Lib 3.fo.11.Sir William Herberts case.

And it is to be obserued, that these three Writs of execution ought to be sued out within the yeare and the day after iudgement, but if the Plaintife sueth out any of them within the yeare, he may continue the same after the yeare vntill he hath execution. And to none of these Writs of Execution the Defendant can plead, but if he hath any matter since the iudgement to discharge him of Execution, he may haue an Audita querela, and relieue himselfe that way, but plead he cannot. As if the Plaintife after Release vnto the Defendant all Executions, yet in none of these three Writs he shall plead it, but is driuen to his Audita querela, as hath been said.

Sect.505.

¶ *Scire facias.* This is a iudiciall Writ and properly lyeth after the yeare and day after iudgement giuen, and is so called, because the words of the Writ to the Sherife bee, Quod Scire facias præfat' T. (being the Defendant) Quod sit coram, &c. ostensurus si quid pro se habeat aut dicere sciat, quare, &c. So as by the Writ it appeareth that the Defendant is to be warned to plead any matter in Barre of Execution, and therefore albeit it bee a iudiciall Writ, yet because the Defendant may thereupon plead, this Scire facias is accounted in Law to be in nature of an action, and therefore (n) a Release of all actions is a good barre of the same, and likewise a Release of Executions is a good barre in a Scire facias, this Writ was gi-

(n)19.H.6.3. 18.E.4.7.

¶ Mes si apres lan et iour le plaintife voit suer vn Scire facias, a sacher si le defendant poit rien dire pur que le plaintife nauera execution, donques il semble q̄ tiel releas de touts actions serra bon plee en barr̄: Mes aſcuns ont semble contrary, entant que le briefe de Scire facias est vn bē de executiō, & est dauer executiō, &c. Mes vncore entant q̄ sur m̄ l' briefe l' defendāt poit pleader diuers matts puis l' iudgement rendue de luy ouster de executiō, coñ vtlagary, &c. et diuers auters matters,

But if after the yeare and day the plaintife will sue a *Scire facias*, to know if the defendant can say any thing why the plaintife should not have execution, then it seemeth that such release of all actions shall be a good plea in barre. But to some seemes the contrary, in as much as the writ of *Scire facias* is a writ of execution, & is to have execution, &c. But yet in as much as upon the same writ the Defendant may plead diuers matters after judgement given to oust him of execution, as outlawry,&c. and diuers other matters, this

matters, ceo bien poit estre dit action, &c. may be well said an action, &c.

tiue in this case by the Statute of W. 2. for at the Common Law if the Plaintife had surceased to sue Execution by Fieri facias or Leuari facias a yeare and a day, he had been driuen to his new originall. W.2.ca.45. 8.E.3.297. 298. 18.E.3.33.lib.3. fol 12. Sir William Herberts case. Flet.li.2. cap.12.

¶ *Ceo bien poet estre dit action.* Here is to be obserued, that euery Writ whereunto the Defendant may plead, be it originall or iudiciall is in Law an action.

Sect. 506.

CEt ieo croy, que en vn Scire facias hors dun fine, vn releas de touts manners dactions, est bon plee en barre.

AND I take it that in a *Scire facias* upon a fine, a release of all manner of actions is a good plea in barre.

This vpon that which hath been said, is euident of it selfe.

Sect. 507.

CMES lou home recouera debt ou damages, et est accord perenter eux, que le plaintife ne suet execution, donqz il couient q̃ le plaintife fait vn releas a luy de touts maners dexecutions.

BUt where a man recovereth debt or damages, and it is agreed betweene them that the plaintife shall not sue execution, then it behoveth that the plaintife make a release to him of all manner of executions.

¶ IL *covient.* Albeit Littleton here saith, hee ought or must, &c. yet there be other words which will release an Execution without expresse words of a release of Execution.

As if a man release all suites the Execution is gone, for no man can haue Execution without prayer and suit, but the King only, and therefore if the King releaseth all suites, it is no barre of his Execution, because in the 19.H.6.4. 26.H.6. Execution 4.li.8.fo.153. Ed. Athams case. Vid Brooke, tit. Releases. 87.

Kings case the Iudges ought to award Execution Ex officio without any suite, but a release of Executions doth barre the King in that case. And so note a diuersity betweene a release of all actions, and a release of all suites

So if the body of a man be taken in Execution, and the Plaintife releaseth all actions, yet shall he remaine in Execution, but if he release all debts or duties he is to be discharged of the Execution, because the debt or dutie it selfe is discharged. 26.H.6.tit.Execution 7.

In the same manner if Execution be sued vpon a Recognizance by Elegit, and the Conusee by Deed make a Defeasance, that if the Conusor doth such an act, that then the Recognizance shall be voide, by this the Execution is discharged. 20.Ass p.7.

So it is if iudgement be giuen in an action of debt, and the body of the Defendant is taken in Execution by a Capias ad satisfac' and after the Plaintife releaseth the iudgement, by this the body shall be discharged of the Execution. 26.H.6. ubi supra.

If the Plaintife after Iudgement release all demands the Execution is discharged, as shall appeare by that which next hereafter shall be said.

If A. be accountable to B. and B. releaseth him all his duties, this is no barre in an Action of account, for duties extend to things certaine, and what shall fall out vpon the account is incertaine; and albeit the Latine word is Debita, yet Duties doe extend to all things due that is certaine, and therefore dischargeth Iudgements in personall Actions, and Executions also. 20.H.6.6. per paston.

Sect.508.

¶ *Touts manners de Demands.*

¶ *Demande*, Demandum is a word of Art, and in the vnderstanding of the Common Law is of so large an extent; as no other one word in the Law is, vnlesse it be Clameum, whereof Littleton maketh mention, Sect.445. And here is to bee obserued, that there be two kinde of demands or claimes viz. a demand or claime in Deed, and a demand or claim in Law; or an expresse, & an implied demand or claim. Littleton here putteth examples of both, and first he speaketh of reall actions, wherein he that bringeth his action maketh his demand: and therefore he is properly called a Demandant, and he that defendeth is called Tenant, because hee is Tenant of the Freehold of the land.

Lit.Sect.445. Bract li.1. cap.10. Pl.Com. Steills case.359 &c.

¶ Item si hom relessa a vn auter touts manners de demands, ceo est le plus meliour release a luy a que le release est fait que il poet auer, & plus vsera a son aduantage. Car per tiel release de touts manners de demands, touts maners dactions reals, personals, et actions dappeale sont ales & extincts, & touts manners de executions sont ales & extincts.

Also if a man release to another all maner of demands, this is the best release to him to whom the Release is made, that hee can have, and shall enure most to his aduantage. For by such release of all manner of demands, all maner of actions reals, personals, and actions of Appeale, are taken away and extinct, and all manner of executions are taken away and extinct.

Of demands implied, or in Law, Littleton putteth examples: First of all Actions personals. Secondly of Appeales, for in both those cases he that bringeth the suit is called Plaintife, and not Demandant, and he that defendeth is called Defendant. Thirdly, Of Executions. Fourthly, Of title or right of Entry, either by force of a Condition, or by any former right, which meerly is a demãd or claim in Law but otherwise it is in the Kings case. Fifthly, Of a Rent seruice, Rentcharge, Common of pasture, &c. which also are meere demands or claimes in Law. All which Littleton here and in the two next Sections following, putteth but for examples, for by the release of all demands other things also be released, as Rents seck, all mixt Actions, a Warranty which is a Couenant reall, and all other Couenants real and personall, Estouers, all manner of Commons and profits apprender, Conditions before they be broken or performed, or after, Annuities, Recognizances, Statutes Merchant or of the Staple, Obligations, Contracts, &c. are released and discharged.

38.H.8.tit.Releas Br.9. 6.H.7.15. 19.H.6.3.4. 20.Ass.Pl.5. 40.E.3.22. 49.E.3.7.b. 50.Ass.Pl.6. 14.H.4.8. 13 R.2.tit. Auow.89.lib.8.fo.153. Ed.Altams case. Lit.170. Sect.748. Dyer 5.El.217.

Sect.509.

¶ Et si home ad title de entry en ascuns terres ou tenements, per tiel Release son title est ale.

¶ Sed quære de hoc, car Fitzlames chiefe Justice de Engleterre tient le contrary, pur ceo que entre ne poit proprement estre dit demande, P.19.H.8.*

¶ And if a man hath title of entry into any lands or tenements, by such a Release his title is taken away.

¶ *Sed quære de hoc*, for *Fitz-James* chiefe Justice of England holdeth the contrary, because an Entrie cannot be properly said a Demand.

¶ *Title.*

¶ *Title.* Here Title is taken in the largest sense, including Right also. 34.H.8 tit.Release.B.9. Chaunceys case lib.8. fo.153.Ed.Althams case.

¶ * Sed quære, &c. This is an addition, and no part of Littleton, and the opinion here cited clerely against Law.

Sect. 510.

¶ ET si home ad Rent seruice ou Rent charge, ou Common de Pasture, &c. per tiel release de touts manners de demaunds fait al Tenaunts de la Terre, dont le seruice ou le rent est issuant, ou en que le Common est, le seruice, le Rent, et le Common est ale et extinct, &c.

AND if a man hath a Rent seruice or Rent charge, or Common of Pasture, &c. by such a Release of all manner of demands made to the Tenants of the Land out of which the seruice or the rent is issuing, or in which the Common is, the seruice, the Rent and the Common is taken away and extinct, &c.

This vpon that which hath béene said, néedeth no further explication.

Sect. 511.

¶ ITem si home relessa a vn auter touts maners d quarrels, ou touts controuersies ou debates enter eux, &c. Quære a quel matter et a quel effect tiels parols soy extendont, &c.

ALso if a man releaseth to another all manner of quarrels, or all controuersies or debates betweene them, &c. *Quære* to what matter and to what effect such words shall extend themselues, &c.

¶ *Quarrels.* Querela, à querendo, this properly concerneth Personall actions or mixt, at the highest, for the Plaintife in them is called Querens, and in most of the Writs it is said Queritur. And yet if a man release all Quereles (a mans déed being taken most strongly against himselfe) it is as beneficial as all actions, for by it all actions reall & personall are released. And by the release of al quarrels, all causes of actions are released thereby, albeit no action be then depending for the same. 40.E.3 47 b.Ed.Althams case vbi supra. 35.H.8.Dier,57. 9.E.4.44. 39.H.6.9.

¶ *Quarrels.* Controuersies and Debates are Synonima, and of one signification. Litis nomen omnem Actionem significat, siue in rem, siue in personam sit. If a man release omnes loquelas, it is as large as omnes Actiones, for omnis Actio est loquela, and it extendeth as well to Actions in Courts of Record, as base Courts, for the Writ of Error saith, In Recordo & Processu, &c. loquela quæ fuit inter, &c. and so the Writ of false Judgement saith, Recordari facias loquelam, where the Judgement was giuen in the County Court. Omnes exactiones, séeme to be large words, for Exactio deriuatur ab exigendo, and Exigere signifieth to enquire or demand. Lib.8.fol.153.Althams case. 21.H.6.16.2. F.N.B.23.18. 30.H.6. 40.E.3.22. 13.R.2.Auowrie 89.

Sect. 512.

¶ ITem si home p son fait soit obligie a vn auter en

ALso if a man by his Deede bee bound to another in a

¶ *Release al Obligor touts Actions, &c.* The reason of

11.H.4.41.43.
v. Rep. 8. fol. 153. Acham's case

of this case is, for that the debt is a thing consisting merely in action, and therefore albeit no action lyeth for the debt, because it is debitum in præsenti, quamuis sit soluendum in futuro, yet because the right of action is in him, the release of all actions is a discharge of the debt it selfe.

certaine summe de money a payer al Feast de S. Michael prochein ensuant si le obligee deuant le dit Feast relessa al Obligor touts Actions il serra barre del dutie a touts temps, et vncore il ne puissoit auer Action al temps de Release fait.

certaine summe of money, to pay at the Feast of Saint *Michael* next ensuing, if the Obligee before the said Feast release to the Obligor all Actions, he shall be barred of the duty for euer, and yet hee could not haue an Action at the time of the Release made.

(o) Trin.2.Ia.in Com. Banco.inter Middleton & Rinnot.18.H.6 23.b. Pl.Com.277.278.In Cresbrokes case per Weston. Rupp's case Rep.5. fol. 28. 7. Middlehol's case ibid. v. Hayes's case. 9. Rep. 38. a. 5.Eliz.Dyer.217.

(o) And so may an executor before Probate release an action, and yet before Probate he can haue no action, because the right of the action is in him, and so it was adiudged. And some say that an Ordinary may release an action, & yet he can haue none. But if a man by Deed doth couenant to build an house or make an estate, & before the Couenant broken, the Couenantee releaseth to him all Actions, Suits, and Quarrels, this doth not discharge the Couenant it selfe, because at the time of the Release, nihil fuit debitum, there was no debt or duty, or cause of action in being. But in that case a Release of all Couenants is a good discharge of the Couenant before it be broken.

Acham's case vbi supra.

Sect. 513.

7.H.7 5.a.

CREase touts Actions. This release shal not barre the Lessor of his Rent, because it was neither debitum nor soluendum at the time of the release made, for if the land be euicted from the Lessee before the Rent become due, the Rent is auoyded, for it is to ber paid out of the profits of the land, and it is a thing not merely in action, because it may be granted ouer. But the Lessor before the day may acquite or release the Rent. But if a man bee bound in a Bond or by contract to another to pay a hundred pounds at flue seuerall dates, he shall not haue an action of Debt before the last day be past, and so note a diuersity betweene duties which touch the realty, and the mere personalty. But if a man be bound in a Recognizance to pay a hundred pounds at flue seuerall dayes, presently after the first day of payment he shall haue execution vpon the Recognizance for that summe, and shall not tarry till the last day past, for that it is in the nature of seuerall Judgments. And so note a diuersity betwéen a debt due by Recognizance, and a debt due by Bond or Contract. And so it is of a Couenant or Promise, after the first default, an action of Couenant, or an action vpon the Case doth lie, for they are seuerall in their nature. Lastly, note a diuersity betweene Debts and Couenants, or Promises.

4.E.3.8. 17.H.6.26. 13.H.4.Auowric 240.

30.E.3.13.b.47.E 3.24.

10.E.2.Executiou 137. 16.E.2.ib.138. 16.E.3. Scire Fac.4.F.N.B.267. 9.E.3.7. Rep.10. fol.127. Ld. Cheny's case.

CMEs si home lessa terra a vn autery terme dun an, rendant a luy al feast de S. Michael prochein ensuant 40. s. & puis deuãt mesm̃ le feast il relessa al lessee touts act, vnc̃ apres mesm̃ l'feast il auera act de Det pur non payment de les 40. s. nient obstant le dit releas. Stude causã diuersitatis enter les deux cases.

BVt if a man letteth land to another for a yeare, to yeeld to him at the Feast of S. *Mich.* next insuing 40. s. & afterwards before the same Feast hee releaseth to the lessee all actions, yet after the same Feast hee shall haue an action of debt for the non payment of the 40. s. notwithstanding the said Release. *Stude causam diuersitatis* betweene these two cases.

3.Mar.Action sur le case.Br.108.3.Mar. Dier.113.lib.4.fol.94. Slades case.li.5.fo.81.b. Fordes case.

39.H.6.28.b.5.E.4.45. 2.H.4.13. 12.R.2. Release 29.

If a man hath an Annuity for terme of yeares, or for life, or in fee, and he before it be behind doth release all actions, this shall not release the Annuity, for it is not merely in action, because it may be granted ouer.

Sect.

Sect. 514.

ITem ou home voile suer briefe de Droit, il couient que il counta del seisin de luy, ou de ses ancestors, & auxy q̃l seisin fuit en temps de mesme le Roy come il counta en son count: Car cest vn ancient ley vse, come appiert per l'Report dun plee en le Eire de Nottingham, titulo droit en Fitzherbert, cap. 26. en tiel forme q̃ ensuist. John Barre port son briefe de Droit enuers Reynold de Assington, et demaunda certaine tenements, &c. ou le mise est ioyne en le bank, et originall & le Proces fueront demandes deuant Justices errãts, ou les parties viendront, & les 12. Chiualers fieront lour serement sans challenge des parties destre allowes, pur ceo que election fuit fait per assent des parties, oue les quater Chiualers, & le serement fuit tiel, Que ieo verity dirr̃, &c. le quel R. de A. ad plus mere droit a tener les tenements que John Barre demanda vers luy per son briefe de Droit, ou John, de

ALso where a man will sue a Writ of Right, it behoueth that he counteth of the seisin of himselfe or of his ancestors, and also that the seisin was in the same Kings time, as hee pleadeth in his plea. For this is an ancient Law vsed, as appeareth by the report of a plea in the Eire of *Nottingham, tit. droit. in Fitzherbert, cap. 26.* in this forme following. *John Barre* brought his Writ of Right against *Reynold* of *Assington*, and demanded certaine Lands, &c. where the mise is ioyned in banke, and the originall & the Processe were sent before the Iustices errãts, where the parties came, and the twelue Knights were sworne without challenge of the parties, to bee allowed, because that choise was made by assent of the parties, with the foure Knights, and the Oath was this: That I shall say the truth, &c. whether *R.* of *A.* hath more meere right to hold the tenements which *John Barre* demãdeth against him by his Writ of Right, or *John* to haue

¶ *IL couient que il counta del seisin de luy ou de ses aunceſtors.* For if neither hee nor any of his Ancestors were seised of the land, &c. within the time of limitation, hee cannot maintaine a Writ of Right, for the seisin of him of whom the Demandant himselfe purchased the land, &c. availeth not.

For the time of limitation See the Statute of 32. H. 8. cap. 2. Vide Sect. 170.

And so it is in a Writ of right of Auowson.

Eire of Northampton

F.N.B. 30. a. 2. E. 3. 27. Litl. 112. 2.

¶ *Auxy que le seisin fuit en temps de meſme le roy come il counta.* Hereby it appeareth, that not only a seisin (as hath beene said) is requisite, but also that the seisin be had in the time of the same king according to his Count.

¶ *Report* commeth of the Latine word Reportare, à re, & porto, id est, referre, à re, & fero. And in the Common Law, it signifieth a publike relation, or a bringing againe to memory cases iudicially argued, debated, resolued, or adiudged in any of the Kings Courts of Iustice, together with such causes and reasons as were deliuered by the Iudges of the same, and in this sense Littleton vseth the word in this place.

¶ *En le Eire de Nottingham.* Eire, Iter. And it signifieth the Court of the Iustices in Eire, and therupon they were called Iusticiarii Itinerantes, in respect that the Iustices residing at West-

Westminster were called Iusticiarii residentes, and were much like in this respect to the Iustices of Assise at this day, although for authority & manner of proceeding (wherof you shall reade (q) in the ancient Authors of the Law) farre different. And as the power of the Iustices of Assises by many Acts of Parliament, and other Commissions increased, so these Iustices Itinerant by little and little banished away. And it is certaine, that the authority of Iustices of Assises Itinerant through the whole Realme, and the Institution of Iustices of Peace in euery County being duly performed, are the most excellent meanes for the preseruation of the Kings peace, and quiet of the Realme, of any other in the Christian World.

(q) Mirror cap.2.§.3.&. §.15.& ca.4.le office des Iustices in Eire. Glanu.li.9.cap.11.li.8. cap.primo.Britton fol. a.b.7.8.&c. Bract.lib.3. fo.115.&c.Flet li.1.ca, 15.&c.4.E.3.32.6.E.3. 35.23.E.3.21. 15.H.7.5. Vide Sect.442.233.234.

Nota

¶ *De Nottingham.* This should be Northampton according to the Originall.

This report whereof Littleton here maketh mention, you shall finde an Abstract of it in 3.E.3 since Littletons time, put in print by Fitzherbert when he was Seriant in 11.H.8. and is not in the Reports or Bookes at large. And yet here it appeareth, that they be of great authority, and vouched by Littleton himselfe for the proofe of a maine point in Law. And hereby it also appeareth how necessary it is to reade Records and Pleas reported or recorded, though they were neuer printed. For those and the like Records are Veritatis & Vetustatis vestigia.

3.E.3.Tit.Droit.F.26.

¶ *Tit. droit.in* Fitzherbert 26. is

auer eux, sicome il demaund, & pur rien lerra que le verity ne dirra, sicome moy ayde Dieu, &c. sans dire a lour escient. Et tiel seremẽt serra fait en attaint, et en Battaile, & en ley gager, car eux mittont chescun chose a fine. Mes John Barre counta ỏl seisin dun Rafe son ancester, en temps le Roy Henry, & Reynolde sur le mise ioyne tendist demy mark pur le temps &c. Et sur ceo Herle Iustice dit al grand assise, apres ceo que ils fueront charges sur le mere Droit, Vous gentes, Reynold donast demy marke al Roy pur le temps, al entent que si vous troues q̃ launcester John ne fuit pas seise en le temps que le demaundant ad count, vous nenquires plus auant del droit, et p̃ ceo vous nous dires, k̃ quel laũcester John, Rafe per noisme, fuit seisie en temps le Roy Henry, come il ad count, ou non. Et si vous troues que il ne fuit seisie en cel temps, vous nenquires nient pluis, & si vous troues que il fuit seisie, donques enquires ouster del briefe. Et puis le graund

them as hee demandeth, and for nothing to let to say the truth, so helpe me God, &c. without saying to their knowledge. And the like oath shall be made in an Attaint, & in battaile, and in wager of Law, for these doe bring euery thing to an end. But *John Barre* counted of the seisin of one *Ralfe* his Ancestor in the time of K. *Henry*, and *Reynold* vpon the miseioyned tendred halfe a marke for the time, &c. And hereupon *Herle* Iustice said to the grãd assise after that they were charged vpon the meere right, You good men, *Reynold* gaue halfe a Marke to the King for the time, to the intent that if you find that the ancestor of *Iohn* was not seised in the time that the demãdant hath pleaded, you shall enquire no further vpõ the right, & for this, you shall tell vs whether the ancestor of *Iohn*, (*Ralfe* by name) were seised in K. *Henries* time as he hath pleaded, or not. And if you find that he was not seised in this time, you shall enquire no more, and if you find that he was seised, then you shall enquire furtherof the writ. And after the grand Assise came in with their

graund Assise reuiendroit oue lour verdict, & disont que Rafe ne fuit pas seisie ē temps le Roy H. per que fuit agard, que Reynold tiendroit les tenements vers luy demandes, a luy & ses heires quites de John Barre & ses heires a remnant. Et John en le mercie, &c. Et le cause pur que ieo aye monstre icy a toy mon fits cest plee, est pur prouer le matter precedent que est dit en briefe de Droit, &c. car il semble per cest plee, que si Reinold nauoit pas tendue ōmy marke pur enquirer ōl temps, &c. donques le graund Assise duissoit estre charge tantsolement ōl mere droit, & nemy del possession, &c. Et issint q̄ touts foits en briefe de Droit, si le possession dont le demandant counta soit en temps le Roy, com̄ il auoit coūt donques le charge del grande assise serra tātsolement sur le mere droit, coment que le possession fuit encounter le ley, come il est dit deuant en cest Chapter, &c.

verdict, and said, that *Ralfe* was not seised in the time of King *Henry*, whereby it was awarded that *Reynold* should hold the tenements demanded against him, to him & his heires quite of *Iohn Barre* and his heires to the remnant. And *Iohn* in mercy, &c. And the reason why I have shewed to thee my Son this Plea, is, to prove the matter precedent which is said in a writ of right, for it seemeth by this Plea, that if *Reynold* had not tendred the halfe marke to enquire of the time, &c. then the grand Assise ought to bee charged onely to enquire of the meere right, and not of the possession, &c. And so alwayes in a Writ of Right, if the possession wherof the demandant counteth bee in the Kings time, as hee hath pleaded, thē the charge of the grand assise shall be only upon the meere right, although that the possession were against the Law, as it is said before in this Chapter, &c.

of a new addition, and therefore though it bee true, yet not to bee allowed.

¶ *Et le original & le proces fuer' demande deuant Iustices Itinerants.* For it is to bee understood, that all Pleas either in the realty or personalty that were begunne and not determined before Justices in Eire, were adiourned by them into the Court of Common Pleas.

4.E.3.41. Peverals case. Mirror. Glanvil. Bracton. Britton. Fleta. } vbi supra

¶ *Les 12. chiualers fieront lour seremēt sauns challenge, &c. pur ceo que le election fuit fait per assent des parties oue les 4. chiualers.*

Here are foure things to bee observed.

30 E.1.tit challenge 178. 21.E.4.77. 39 E.3.1. 44.E.3.6. 11.H.6.13.

First, That omnis consensus tollit errorem, and against his owne consent he cannot challenge the twelue.

Secondly, That the foure Knights Electors of the grand Assise are not to bechallenged, for that in Law they bee Judges to that purpose, and Judges or Justices cannot bee challenged. 4.E.3.13.

*And that is the reason that Noblemen that in case of high Treason are to passe upon a Peere of the Realme cannot be challenged, because they are Judges of the fact, and the Magna Charta saith, per iudicium parum suorum.

*Per ceo le reason un Peer ne poit estre challenge car ils sont Judges del fact.

Magna Charta cap. 29.

Thirdly, That the twelue before any assent may be challenged before the foure Knights electors, but after assent or return of the pannell before the Justices, there shall be no challenge to the pannell nor to the polles. 39 E.3.2. 7.H.4 20.

Fourthly, If there be not foure Knights for Electors in that County, the next to them in that County shall be taken. Ne curia Regis deficeret in iustitia exhibenda. 7.H.4.20.

¶ *Sauns dire a lour eſcient.* And here it appeareth, that where the iudgement is finall, there the Oath of the grand Assise or Jury is absolute & not to their knowledge, as here

here in the Writ of Right, in the Attaint, and in wager of Law, for the iudgement in euery of these three is finall.

Vid.Sect.193.

¶ *Le mise est ioyne.* Mise is a word of art appropriated onely to a Writ of Right, so called because both parties haue put themselues vpon the meere right to be tryed by grand Assise or by Battaile: so as that which in all other actions is called an Issue, in a Writ of Right in that case is called a Mise. And in this sense Littleton taketh it here. But in a Writ of Right if a Collaterall point is to be tryed, there it is called an Issue: and is deriued of this word (Missum) because the whole cause is put upon this point. It is also taken for expences as Missæ & Custagia. And sometime it signifieth a customary grant to the King, or Lords Marchers of Wales by their Tenants at their first comming to their Lands.

Regiſtrum.

33.H.8.cap.13. 3.E.6.ca. 36.

10.E.3.10. 31.E.3.droit. 11. 22.E.3.17. 18.H 3. droit.62. 33.E.3. ib 39. Lamb.explicat verborum verbo Mancusa.

¶ *Tender di marke al Roy.* Master Lambard saith, that Mancusa & Marca Saxonice Mancup.7. Marc' Nummus 30. valens denarios. And this Marc now called a Marke, being an old Saxon word, is the cause that England most commonly reckened by Marks, Libra Saxonice is a pund, á pondo, which is called so vntill this day. Solidus qui apud nos est pars libræ vicesima, denarios per id temporis continebat quinque, nunc duodecim, and Schilling is a Saxon word, and with us vsed to this day. Penny Saxonice pennig, Latine, Denarius, but the value of these haue not beene alwayes one.

F.N.B.31.c. 31.E.3. droit.15. 6.E.3.ibid.24

In a Writ of Right of Auowson brought by the King, the Tenant shall not tender the Marke, because Nullum tempus occurrit Regi, and therefore the King shall allradge, that he or his Progenitor was seised without shewing any time.

Mirror. ca.1.§.17.ca.3. de Attaint ca.5.§.1. Bract.fo.288.289.&c. 292. Brit. fol.241.245. 246.&c.Flet.li.5.ca.21. & 34. Fortescue ca.26.

¶ *En Attaint.* Attincta, is a Writ that lyeth where a false Verdict in Court of Record vpon an Issue ioyned by the parties is giuen. And of ancient Writers it is called Breve de convictione. And is deriued of the participle Tinctus, or Attinctus, for that if the petty Iury be attainted of a false Oath, they are stained with periury, and become infamous for euer, for the iudgement at the Common Law in the Attaint importeth eight great and grieuous punishments, 1. Quod amittat liberam legem imperpetuum, that is, he shall be so infamous as shall neuer be receiued to be a Witnes, or of any Iury. 2. Quod foris faciant omnia bona & catalla sua. 3. Quod terræ & tenementa in manus Domini Regis capiantur. 4. Quod vxores & liberi extra domus suas ejicerentur. 5. Quod domus suæ prostrentur. 6. Quod arbores suæ extirpentur. 7. Quod prata sua arentur, Et 8. Quod corpora sua carceri mancipentur. So odious is periury in this case in the eye of the Common Law, and the seuerity of this punishment is to this end, Vt pœna ad pauces, metus ad omnes perueniat, for there is Misericordia puniens, and there is Crudelitas parcens: And seeing all tryals of reall, personall, and mixt actions depend vpon the Oath of 12. men, prudent Antiquity inflicted a strange and seuere punishment vpon them, if they were attainted of periury.

But since Littleton wrote, a Statute hath beene made in mitigation of the seuerity of the Common Law, in case when the petite Iury is attainted, and therefore it is taken by equity. For where the Statute saith, that the party grieued shall haue an Attaint against the party which shall haue iudgement vpon the Verdict, yet an Attaint shall bee maintained vpon that Statute against the Executors of the party, Et sic de similibus. (a) But see the Statute and Authorities quoted in the Margent. Onely I thought good to obserue three things.

(a)23.H.8.ca. 3. 3.Eliz.Dyer 201. 7.E.6.ibidem 81. 3.Mar.ibidem 129. 7.Eliz.ibidem 235. 24.H.8.Br.Attaint.96. 4.Mar.ib.127. 20.H.7. 5.42.E.3.26.F.N.B. 107.D. Mirror ca 1.§ 3.ca 3 §. ca 5.§.1.Bracton lib.3. 141.b.& fol.320.331. Glanuil. lib.2.ca.3,4,5. Lib.8.ca.9. Lib.4 ca.1. Brit.fo.40.42.43. 81. 175.190. Fleta lib 1. ca.32.& lib 2 cap.48.

First, that no Attaint can be maintained vpon this Statute but betweene party and party.

Secondly, that no Conusance can be granted vpon any Attaint, because all Attaints are to be taken either before the King in his bench, or before the Iustices of the Common place, and in no other Courts, &c.

Thirdly, consider what Pleas may bee pleaded in an Attaint by force of this Act, and what not.

(b)4.E.3.41. 17.E.3. 19.H.6.35. 1.H.4.3. 30 E.3.20. 29.E.3 12. 33.H.4. 4. Stan.174.178. 27.El.Dyer. 9 E.4.35. 2.H.6.6. 3.H.6.55. Vid.li 9.fo.32.b.& 33.b. Mirror ca.4. Del office des Iustices.&c. Glanuil.lib.1.cap 9. lib.8.cap.8.

¶ *En battaile.* Duellum, Monomachia, and it signifieth in the Common Law a tryall by single fight, by battle or combate, Monomachia. (b) And in the Writ of Right neither the Tenant or Demandant shall fight for themselues, but finde a Champion to fight for them: because if either the Demandant or Tenant should be slaine, no iudgement could be giuen for the Lands or Tenements in question. But in an Appeale the Defendant shall fight for himselfe, and so shall the Plaintife also, for there if the Defendant be slaine, the Plaintife hath the effect of his suite, that is, the death of the Defendant, the order and solemnity whereof you may reade in our ancient and latter bookes. And this the Law did institute when the Tenant failed of his Witnesses, or Euidences, or other proofes, and the presumption of Law is, that God will giue victory to him that hath right.

¶ *Ley gager.* Vadiare Legem, and there is also Facere Legem, by making of this Law. That is, to take an oath, (for example) that hee oweth not the debt demanded of him vpon a simple Contract, nor any penny thereof. And it is called Wager of Law, because of ancient time

time be put in surety to make his Law at such a day, and it is called making of his Law, because the Law doth give such a speciall benefit to the Defendant to barre the Plaintife for ever in that case. (r) But he ought to bring with him eleuen persons of his neighbours that will auow vpon their oath, that in their consciences he saith truth, so as he himselfe must be sworne De fidelitate, and the eleuen De credulitate.

Lib.10 cap.5. Bract.li 3.tract.2 ca.37. & lib.5.fo.410. Britton fol.56. Fleta lib.2.ca.56.63. (r) Magna Carta ca.28. Bracton lib.5.fo.410. Fleta lib.2.ca.63.Diuersities des Courts, 33.H.6.8.

And a Wager of Law lieth not when there is a specialty, or Deed to charge the Defendant, but when it groweth by word, so as he may pay or satisfie the party in secret, whereof the Defendant hauing no testimony of witnesses may wage his Law, and thereby the Plaintife is perpetually barred, as Littleton here saith, for the Law presumeth that no man will forsweare himselfe for any worldly thing, but mens consciences doe grow so large (specially in this case passing with impunity) as they chose rather to bring an Action vpon the case vpon his promise, wherein (because it is Trespasse sur le case) he cannot wage his Law, then an action of debt.

33.H.6.31.

A man Outlawed or attainted in an Attaint, or vpon an Inditement of conspiracy, or of periury, or otherwise, whereby he become infamous, shall not wage his Law.

11.H.6.49. 15.E.4.2.

A man vnder the age of 21. yeares shall not wage his Law, but a Feme couert together with her husband shall wage her Law.

32.H.6.24. 8 H.5.Ley 66. 35.H.8.Ley Br.102.

When the suite is for the King, or for his benefit, as in a Quo minus, the Defendant shall not wage his Law.

If an Infant be Plaintife the Defendant shall not wage his Law. An Alien shall wage his Law in that language he can speake.

26.P.3.63.b. 21.H.6 42.

In no case where a contempt, trespasse, deceit, or iniury is supposed in the Defendant, he shall wage his Law, because the Law will not trust him with an oath to discharge himselfe in those cases, only in some cases in Debt, Detinue, Accompt, the Defendant is allowed by Law to wage his Law.

44.E.3.32. 18.E.3.4. 24.E.3.39. 45.E.4.16. 16.E.4.5.

In an action of Account against a Receiuor vpon a receipt of money by the hand of another person for account render (vnlesse it be by the hands of his wife, or his Commoigne) the Defendant shall not wage his Law, because the receipt is the ground of the action which lyeth not in priuity betweene the Plaintife and Defendant, but in the notice of a third person, and such a receipt is trauersable. (d) But in an action of debt vpon an Arbitrament, or in an action of Detinue by the bailement of anothers hand, the Defendant shall wage his Law, because the Debet and the Detinet is the ground of those actions, and the Contract or Bailement though it be by another hand, is but the conueyance, and not trauersable. In an action of Account against a Bailife of a Mannor, the Defendant cannot wage his Law, because it foundeth in the realty. In an action of Debt which concerns the realty, as for Debt for a Rent vpon a Lease for yeares, or an action of Detinue for detaining an Indenture of a Lease for yeares, the Defendant shall not wage his Law, much lesse for Charters or Deedes which concerne inheritance.

(d) 33.H.6.24. 13.H.7. 3.a. 22.H.6.41. 1.H.6. 1.b. 8.H.6.11. 18.H.3.3. 3.E.3.28. 11.H.4.54. 5.H.5.13. 21.H.6.30. 24.E.3.Ley.63. 30.E.3. 19.9.E 4.1.

34.H.8.Ley Gager.Br. 97.

In an action of Debt for a Fine or Amerciament in a Leete, the Defendant shall not wage his Law, because the Leet is a Court of Record, but in an action of Debt for an Amerciament in a Court Baron the Defendant shall wage his Law, for that it is no Court of Record.

10.H.6.7. 1.H.7.25. 6.Eliz. Benilocs.

In Debt vpon an accompt before Auditors the Defendant shall not wage his Law, and this by construction of the Statute of W.2.cap.11. which giueth them great authority, and saith, Coram Auditoribus, and therefore of an account before one Auditor the Law lyeth. So if the Lord before Auditors be found in surplusage, in an action of Debt brought by the Accomptant, the Lord shall not wage his Law by construction also vpon this Statute, as an incident rising vpon the Account.

9 H.5.3. 8.H.6.15. 22.H.6.35, 38.H.6.6. 14.H.6.62. 38.H.6.6.

In an action of Debt by a Gaoler against the Prisoner for his victuals, the Defendant shall not wage his Law, for he cannot refuse the Prisoner, and ought not to suffer him to die for default of sustenance, otherwise it is for tabling of a man at large.

28 H.6.4. 19.H.6.30 22.H.6.13. 39.H.6.18.

In an action of Debt brought by an Attorney for his Fees the Defendant shall not wage his Law, because he is compellable to be his Attorney. And so if a seruant be retained according to the Statute of Labourers, in an action of Debt for his Salary, his master shall not wage his Law, because he was compellable to serue, otherwise it is, if he be not retained according to the Statute.

21.H.6.4. 38.H.6.22. 39.H.6.18.

Whersoeuer a man is charged as Executor or Administrator, he shall not wage his Law, for no man shall wage his Law of another mans Deede, but in case of a Successor of an Abbot, for that the house neuer dieth.

5.H.6.38. 1.H.7 25. 13.H.7.

In Debt vpon a penalty giuen by Statute, the Defendant shall not wage his Law. There is another kinde of wager of Law in a reall action, of Non summons, but thereof Littleton speaketh not.

10.H.7.18.

¶ *Et sur ceo* Herle *Iustice dit, &c.* Hereby it appeareth that it is the office

of the Iudges to inſtruct the grand Aſſiſe or Jury in points of Law, for as the grand Aſſiſe or other Jurors are triers of the matters of fact, Ad queſtionem facti non reſpondent Iudices, ſo Ad queſtionem iuris non reſpondent Iuratores. And accordingly the Judge in this caſe directed the grand Aſſiſe, viz. if they found that, &c.

Glanvil.li.12.cap.1.&c. Bracton li.5.fol.328.

¶ *Per que fuit agard.* Here are two things to be obſerued. Firſt, the forme of a Iudgement finall. Secondly, that a Iudgement finall is to be giuen in this particular caſe. For the forme of the finall iudgement for the Tenant is here expreſſed, that the Tenant ſhall hold the Tenements demanded againſt him, to him and his heires quite of the Demandant and his heires for euer, and the Demandant in the mercy. Quod tenens teneat terram illam ſibi & hæredibus ſuis in pace verſus petentem, & hæredes ſuos in perpetuum.

Lib.5.fol.85.Pennins caſe.

For the ſecond point ſeeing the Aſſiſe is ioyned vpon the meer right, albeit the Verdict of the grand Aſſiſe be giuen vpon another point, yet iudgement finall ſhall be giuen. And ſo it is if the Tenant after the Aſſiſe ioyned make default, or confeſſe the action, or if the Demandant be Non-ſuite, and yet in none of theſe caſes they of the grand Aſſiſe gaue their verdict vpon the meere right.

34.E.3.Iudgm.256.adnadge accord. 13.H.4. Iudgm.245. 10.H.6.8. 20 H.6.38.b. 21.H.6. 34.b. 26.H 8.8.b. 1.Mar.Dy.98 li.5 fo.85. Pennins caſe.F.N.B.5. 11.11.

¶ *Come eſt auantdit*, Vid. Sect.478.

CHAP. 9. Of Confirmation. Sect.515.

Bract.li.2.fol.32.b. & 58.b. Brit.233.

HEre firſt our Author ſhewes what a Cõfirmation is.

Confirmation. Confirmatio commeth of the verbe * Confirmare, quod eſt firmum facere, and therefore it is ſaid That Confirmatio omnes ſupplet defectus, licet id quod actum eſt ad initio, non valuit. A Confirmation is a conueyance of an eſtate or right in eſſe, whereby a voidable eſtate is made ſure and vnauoidable, or whereby a particular eſtate is encreaſed.

* Lit.pag.ſequen.

Bract.li.2.58.

Bract.li.2.fol.27.58. 38.H.6.34.37.Pl.Com. Count.de Leiceſters caſe.

A Confirmation doth not ſtrengthen a voide eſtate. Confirmatio eſt nulla vbi donum præcedens eſt inualidum, et vbi donatio nulla omnino nec valebit confirmatio, for a Confirmation may make a voidable or defeaſible eſtate good, but it cannot worke vpon an eſtate that is voide in Law. Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei, vel iuris vnde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione. And another ſaith, (c) Confirmare eſt id quod prius infirmum fuit firmare. Et donationum alia incepta, & defectiua, & poſt tempus confirmata, confirmatio enim omnem ſupplet defectum, poterit enim eſſe in pendenti donec per ratihabitionem hæredis cum ad ætatem peruenerit roboretur.

10.E.2.Confirm.24. 32.E.3.9. (c) Fleta lib.3.cap.14. & lib.3.cap.3.

¶ Ratificaſſe, Ratificare eſt ratum facere, and is æquipollent to Confirmare, which, as hath beene ſaith, is firmum facere.

44.Aſſ.3.

¶ Approbaſſe commeth of Ad and Probo, which is to make perfect and good.

¶ Confirmaſſe. Here is to be obſerued, That there bee two kindes of Confirmations, viz. Confirmations expreſſe or in Deed, whereof Littleton hath here put theſe three examples, and Confirmations implied, or in Law, whereof Littleton hereafter ſpeaketh in this Chapter. Quælibet confirmatio, aut eſt perficiens, creſcens, aut diminuens, and of all theſe Littleton putteth examples in this Chapter. And hereof Fleta ſaith, Carta autem de confirmatione eſt illa quæ alterius factum conſolidat & confirmat, & nihil noui attribuit, quandoque tamen confirmat & addit.

Li.9.fo.142.Beamonds caſe. Flet,li.3.cap.14.

¶ CAit de Confirmation ẽ communement en tiel forme, ou a tiel effect, Noverint vniverſi, &c. me A.de B. ratificaſſe, approbaſſe, & confirmaſſe C. de D. ſtatum & poſſeſſionem, quos habeo, de, & in uno meſſuagio, &c. cum pertin' in F.&c.

A Deede of confirmation is cõmonly in this forme, or to this effect: *Know all men, &c. That I A. of B. haue ratified, approved, and confirmed to C of D. the eſtate and poſſeſſion which I haue, of, and in one Meſſuage, &c. with the Appurtenances in F.&c.*

Sect. 516.

CEt en aſcũ caſe vn fait de Confirmation eſt bone et auailable, lou en tiel caſe vn fait de Releaſe neſt paſſe bone, ne auailable. Sicõe ieo leſſa Terre a vn home pur terme de ſa vie, l'quel leſſa meſm̃ la terre a vn auter per terme de xl. ans, per force de quel il eſt en poſſeſſion. Si ieo p mon Fait confirme leſtate del Tenant a terme dans, et puis le tenant a terme de vie mozuſt durant le terme des ans, ieo ne puis enter en la Terre durant le dit terme.

AND in ſome caſe a Deed of Confirmation is good and available, where in the ſame caſe a Deed of Releaſe is not good nor availeable. As if I let land to a man for terme of his life, who letteth the ſame to another for terme of forty yeares, by force of which he is in poſſeſſion: if I by my Deed confirme the Eſtate of the tenant for yeares, and after the Tenant for life dieth during the terme of yeares, I cannot enter into the Land during the ſaid terme.

LIttleon in this chapter putteth eight diuerſities betweene a Confirmation and a Releaſe. and thereof for illuſtration here he putteth two caſes in this and the next Section, which vpon that which hath beene ſaid in the precedent Chapters, is ſufficiently explained. Onely in both theſe caſes this is to bee obſerued, That where a Confirmation ſhall enlarge an eſtate, there priuity is required, as well as in the caſe of the Releaſe, as by many examples which Littleton puts in this Chapter appeareth. And note, here is the firſt caſe wherein a Releaſe and a Confirmation doe differ: 49.E.3.32. 9.H.6.22. Tit.Releaſe 44

Leſſee for life made a Leaſe for thirty yeares, and after the Leſſor and Leſſee for life made a Leaſe for ſixty yeares to another, which Leaſe for ſixty yeares the Leſſor did firſt confirme, and after the Leſſor confirmed the Leaſe for thirty yeares, and after Tenant for life dyed within the thirty yeares, and it was adiudged, (d) That the Leaſe for thirty yeares was determined by the death of Leſſee for life, and that the Leſſee for ſixty years might enter, for that albeit the Leaſe for ſixty yeares was the latter in time, yet was it of greater force in Law, for that the Leſſor who hath power to confirme which of them he would, did firſt confirme the ſecond Leaſe. (d) Inter Vaſwel & Lodge. temp. Reg. Eliz.

In this Chapter is alſo to be obſerued eight Caſes, wherein a Releaſe & a Confirmation haue the like operation in Law.

Sect. 517.

CVſtoze ſi ieo per mon fait de Releaſe auoy releas al tenant a terme dans en la vie le tenant a terme de vie, cel Releaſe ſerra void, pur ceo que adonques ne fuit aſcun priuity perent moy et le tenant a terme dans, car releaſe neſt auaileable al tenant a terme dans mes lou eſt vn priuitie perent luy et celuy q̃ releaſaſt.

YEt if I by my Deed of a Releaſe had releaſed to the Tenant for years in the life time of the tenant for life, this Releaſe ſhall be voide, for that then there was not any privity between me & the Tenant for yeares: for a Releaſe is not available to the Tenant for yeares, but where there is a privity betweene him and him that releaſeth.

This belongeth to the firſt diuerſity betweene a Releaſe and a Confirmation,

Sect.518.

CHere is the second diuersitie betweene a Release and a Confirmation. But if the Disseisor make a Lease for yeares to begin at Michaelmasse, and the Disseisee confirme his estate, this is voide, because hee hath but interesse termini, and no estate in him, whereupon a Confirmation may enure.

4.H.7.10. by Read. 22.E.4.36.

CEſt meſme le maner eſt, ſi ieo ſoy diſſeiſie, et le Diſſeiſor fait vn Leaſe a vn auter pur terme dans, ſi ieo releſſa al termor, ceo eſt voyde, mes ſi ieo cõfirma leſtate l'termor, ceo eſt bone & effectual.

IN the ſame manner it is if I be diſſeiſed, and the Diſſeiſor make a Leaſe to another for term of yeares, if I releaſe to the Termor, this is void: but if I confirme the Eſtate of the Termor, this is good and effectuall.

Sect.519.

CItem ſi ieo ſoy diſſeiſie, & ieo confirma leſtate le Diſſeiſor, il ad bone & droiturel eſtate en Fee ſimple, cõment que en le fait de confirmation nul mention eſt fait de ſes heires, pur ceo que il auoit Fee ſimple al temps de Confirmation. Car en tiel caſe ſi l'diſſeiſee confirma leſtate le diſſeiſor, A auer et tener a luy et a ſes heires de ſon corps engendres, ou a auer et tener a luy pur l'terme de ſa vie, vncore le diſſeiſor ad fee ſimple, et eſt ſeiſie en ſon demeſne come de fee, pur cõ que quant ſon eſtate fuit confirm̃, donque il auoit fee ſimple, et tiel fait ne poit changer ſon eſtate, ſans entry fait ſur luy, &c.

ALſo if I be diſſeiſed, and I confirme the eſtate of the Diſſeiſor, hee hath a good and rightfull eſtate in Fee ſimple, albeit in the Deede of Confirmation no mention be made of his heires, becauſe hee had Fee ſimple at the time of the Confirmation. For in ſuch caſe if the Diſſeiſee confirme the ſtate of the Diſſeiſor, To have and to hold to him and his heires of his body engendred, or to have and to hold to him for term of his life, yet the Diſſeiſor hath a fee ſimple, and is ſeiſed in his Demeſne as of Fee, becauſe when his eſtate was confirmed, hee had then a Fee ſimple, and ſuch Deed cannot change his eſtate, without entry made upon him, &c.

19.H.6.22. 6.E.3. Confirm.4.

CHere is the firſt caſe wherein the Releaſe and Confirmation doth agree, viz. a Confirmation to a Diſſeiſor in Tatle, or for any particular eſtate, is of the like force as a Releaſe to a Diſſeiſor, during ſuch eſtate, which in both caſes is good for euer. In the ſame maner it is, if the Diſſeiſor make a gift in Tatle, and the Diſſeiſee confirme the eſtate of the donee for the life of the donee, this confirmation enures to the whole eſtate Tatle, for a Confirmation can make no fraction of any eſtate, to extend but to part of the eſtate onely: Et ſic de cæteris.

Sect.

Sect. 520.

CEſt meſme le maner eſt, ſi ſon eſtate ſoit confirme pur terme de vn iour ou pur terme dun heure, il ad bon eſtate en fee ſimple, pur ceo que ſon eſtate en fee ſimple fuit vn foits confirm. Quia confirmare, idem eſt, quod firmum facere, &c.

IN the ſame manner it is if his eſtate bee confirmed for terme of a day, or for terme of an houre, hee hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was once confirmed. *Quia confirmare, idem eſt, quod firmum facere, &c.*

CHere is the ſecond caſe wherein the releaſe & Confirmation doe agree. The reaſon of this is for that the Diſſeiſor hath a Fee ſimple, and therefore if this eſtate bee confirmed but for an houre, it is good for euer, becauſe (ſaith Littleton) Confirmare, idem eſt, quod firmum facere.

Nota, a diuerſity betweene a bare aſſent without any right or intereſt, and an aſſent coupled with a right or intereſt, and therefore an Attornement cannot bee made for a time nor vpon Condition; Lib.5.fol.81.Fordes caſe.

but if the perſon make a Leaſe for a hundred yeares, the Patron and the Ordinary may confirme fifty of the yeares, for they haue an intereſt, and may charge in time of vacation. And ſo if a Diſſeiſor make a Leaſe for an hundred yeares the Diſſeiſee may confirme parcell of thoſe yeares, but then it muſt be by apt words, for he muſt not confirme the leaſe, or demiſe, or the eſtate of the Leſſee, for then the addition for parcell of the terme ſhould be repugnant when the whole was confirmed before, but the Confirmation muſt be of the Land for part of the terme. So may the Confirmation be of part of the Land, as if it be of forty acres, he may confirme twenty, &c. So if tenant for life make a Leaſe for a hundred yeares, the Leſſor may confirme either for part of the terme, or for part of the Land. But an eſtate of Free-hold cannot be confirmed for part of the eſtate, for that the eſtate is intire, and not ſeuerall as yeares be.

Sect. 521.

ITem ſi mon Diſſeiſor fait vn leas a terme de vie, le remainder ouſter en fee, ſi ieo releas al tenant a terme de vie ceo vera a celuy en le remainder. Mes ſi ieo confirm leſtate d le tenant a terme de vie, vncore apres ſon deceaſe ieo puis bien enter, pur ceo que riens eſt confirme forſque leſtate le tenant a terme de vie, iſſint que apres ſon deceaſe, ieo puis enter. Mes quant ieo releſſa

ALſo if my Diſſeiſor maketh a Leaſe for life, the remainder over in fee, if I releaſe to the Tenant for life, this ſhall enure to him in the remainder. But if I Confirme the Eſtate of the Tenant for terme of life, yet after his deceaſe I may well enter, becauſe nothing is confirmed but the Eſtate of the Tenant for life, ſo that after his de-

CHere is the Third Caſe wherein the Releaſe and Confirmation differ, for the Confirmation to the Tenant for life doth not enure to him in the remainder.

And ſo it is when the ſeuerall eſtates be in one perſon, as if the Diſſeiſor make a gift in Taile the remainder to the right heires of Tenant in Taile, if the Diſſeiſee confirme the eſtate in Taile, it ſhall not extend to the Fee ſimple, no more then if the Diſſeiſor had made a gift in Taile, the remainder for life, the remainder to the right heires of Tenant in taile, this extendeth onely to the eſtate Taile, and not to

to the remainder for life, nor to the remainder in fee. But if the Disseisor make a Lease for life to A. and B. and the Disseisee confirme the estate of A. B. shall take advantage thereof, for the estate of A. which was confirmed was joynt with B. and in that case the Disseisee shall not enter into the Land, and devest the moity of B.

If the Disseisor infeoffe A. and B. and the heires of B. if the Disseisee confirme the estate of B. for his life, this shall not only extend to his Companion, as hath beene said, but to his whole fee simple, because to many purposes hee had the whole fee simple in him, and the confirmation shall bee taken most strong against him that made it.

Tenant in tayle discontinueth in fee and dyeth, the Discontinuee make a Lease for life, & granteth the reuersion to the issue, he shall not haue a Formedon against Tenant for life, for by his Formedon he must recouer estate of Inheritance, and the Lessee for life hath not the Inheritance, but the issue in taile himselfe hath it.

tout mon droit al tenant a terme de vie, ceo vyera a celuy en le remainder, ou en l'reuersion, pur ceo que tout mon droit est ale per tiel releas. Mes en cest cas, si le disseisee confirme lestate & le title celuy en le remainder sans alcun confirmation fait a tenant a terme de vie, le disseisee ne poit enter sur le tenant a term̃ de vie pur ceo que l'remainder est dependant sur lestate le tenant a terme de vie, & si son estate serroit defeate, le remainder serroit defeate, per lentrie le disseisee, & ceo ne serra reason que il per son entre defeateroit le remainder encounter son confirmation, &c.

cease I may enter. But when I release all my right to the Tenant for life, this shall enure to him in the remainder or in the reversion, because all my right is gone by such release. But in this case if the Disseisee confirme the estate and title of him in the remainder without any confirmation made to Tenant for life, the Disseisee cannot enter upon the Tenant for terme of life, for that the remainder is depending upon the state for life, and if his estate should bee defeated, the remainder should be defeated by the entry of the Disseisee, and it is no reason that he by his entry should defeat the remainder against his confirmation, &c.

If Feoffee vpon condition make a Lease for life, or a gift in taile, and the feoffor release the Condition to the feoffee, he shall not enter vpon the Lessee or Donee, because he cannot regaine his ancient estate.

If the Feoffee vpon Condition make a Lease for life, the remainder in fee, if the Feoffor release the Condition to the Lessee for life, it shall enure to him in the remainder, as well as in the case of the Right, or of a Rent, &c.

If a Feme Disseisoresse make a feoffment in fee to the vse of A. for life, and after to the vse of her selfe in taile, and the remainder to the vse of B. in fee, and then taketh husband the Disseisee, and he releaseth to A. all his right, this shall enure to B. and to his owne wife also, for by the rule of Littleton it must enure to all in the remainder.

But if A. letteth to B. for life, and B. maketh a Lease to C. for his life, the remainder to A. in fee, A. releaseth to C. all his right, this is good to perfect the estate of C. for his life. But when C. dyeth, A shall be in of his old estate, for his release could not enure to himselfe to perfect his defeasible remainder, but his ancient right remaineth. And note that in these two cases the fee is devested, and bested all at one instant, in the same manner, as if Tenant in Taile make a Lease for life, at the same instant the estate taile is devested out of the Donee, and the reuersion in fee out of the Donor, & a new fee bested in Tenant in taile. And so if the husband make a Lease for life of his wives Land, he devesteth his owne estate, that he hath in her right, & the Inheritance of his wife. & at the same instant bested a new reuersion in fee in himselfe.

Vid. 29. Ass. 17. 30. H. 8. Recou. en value Br. 30. 13. E. 3. entre cong. Br. 127.

¶ *Mes en cest case si le disseisee confirme lestate & title celuy en le remaynder.* Here is the third case wherein the Release and Confirmation doe agree, for

for the Confirmation made to him in the remainder shall auaile the tenant for life, as much as the Release shall. pl. Com Delamers case. Vid. Sect. 374.

¶ *Par ceo que le remainder est dependant, &c.* By this some haue gathered that if a Disseisor make a Lease for life, reseruing the reuersion to himselfe, and the Disseisee confirmeth the state of the Disseisor, that he may enter vpon the Lessee, because the estate of him in the Reuersion dependeth not vpon the estate for life as the Remainder: but all is one, for by the Confirmation made to him in the Reuersion, all the right of him that confirmeth is gone, as well as when he maketh it to him in remainder, and he cannot by his entry auoide the estate of the Lessee for life, but hee must auoide the estate of the Lessor, which against his owne Confirmation he cannot doe, and it hath beene adiudged, that if a disseisor make a Lease for life, and after leuie a Fine of the Reuersion with Proclamations, and the fiue years passe, so as the Disseisee is for the Reuersion barred, he shall not enter vpon the Lessee for life. Reported by Sir Iohn Popham chiefe Iustice.

¶ *Le remainder serra defeat.* It is regularly true, that when the particular estate is defeated, that the remainder thereby shall be also defeated, but it faileth in diuers cases.

For where the particular estate and the remainder depend vpon one title, there the defeating of the particular estate is a defeating of the remainder. But where the particular estate is defeasible, and remainder by good title, there though the particular estate be defeated the remainder is good. As if the Lessor disseise A. Lessee for life, and make a Lease to B. for the life of A. the remainder to C. in fee, albeit A. re-enter, and defeate the estate for life, yet the remainder to C. being once vested by good title shall not be auoided, for it were against reason, that the Lessor should haue the remainder againe against his owne Liuery. and this is well warranted by the reason of Littleton in this case. So it is if a Lease be made to an Infant for life, the remainder in fee, the Infant at his full age disagree to the estate for life, yet the remainder is good, for that it was once vested by good title, for in both these cases there was a particular estate at the time of the remainder created. Vid. pl Com. Colchirsts case.

If a Lease be made to A. for the life of B. the remainder to C. in fee, A. dyeth before an occupant entreth, here is a remainder without a particular estate, and yet the remainder continueth good. 17. E. 3. 48.

A Rent is granted to the Tenant of the land for life, the remainder in fee, this is a good remainder, albeit the particular estate continued not, for Eo instante that he tooke the particular estate, Eo instante the remainder vested, and the suspension in iudgement of Law grew after the taking of the particular estate. 3. E. 3. Abb. Ass.

If a man grant a Rent to B. for the life of Alice, the remainder to the heires of the body of Alice, this is a good remainder, and yet it must vest vpon an instant. 7. H. 4. 6.

Sect. 522.

¶ Item si sont deux disseisors, et le disseisee releassa a vn de eux, il tiendra son compagnion hors de la terre. Mes si le disseisee confirma lestate de lun, sans pluis dire en le fait, ascuns dient q̃ il ne tiendra son compagnion dehors. Mes tiendra ioyntm̃t ouc luy pur ceo que riens fuit confirme forsque

ALso if there bee two disseisors, & the disseisee releaseth to one of them, hee shall hold his companion out of the land, but if the disseisee confirme the estate of the one without more saying in the Deede, some say that he shall not hold his companion out, but shall hold joyntly with him, for that nothing was con-

¶ This is the fourth case wherein the Release and the Confirmation seeme to differ, being made vnto one of the Disseisors. 1. 472

¶ *Confirme forsque son estate, &c.* Hereby it appeareth that if the Disseisee confirme the estate of the one Disseisor in the lands, To haue and to hold the lands or Tenements, or the right of the Disseisee, to him and his heires, hee shall hold out the other Disseisor, and that appeareth by Littleton, first vpon these words (Confirme the state of one) without more saying in the

Deed, viz. To haue and to hold the lands, &c. Secondly, the reason of Littleton in expresse words is, for that nothing was confirmed but his estate which was ioynt. Thirdly, the next two Sections make it plaine where the Habendum is added.

Hereby also it appeareth that a Release is more forcible in Law than a Confirmation, If the Disseisee & a stranger Disseise the heire of the Disseisor, and the Disseisee confirme the estate of his companion, this shall not extinguish his right that was suspended: so as if the heire of the Disseisor re-enter the right of the Disseisee is reuiued. And so it is if the Grantee of a Rent-charge and an estranger disseise the Tenant of the Land, and the Grantee confirme the estate of his companion the Tenant of the land re-enter, the Rent is reuiued, for the Confirmation extended not to the Rent suspended, otherwise it is of a Release in both cases.

Sect.523.

¶ Et pur ceo ascuns ont dit, que si deux ioyntenants sont, et lun confirme lestate lauter que il nad forsque ioint estat, sicome il auoit deuant. Mes sil ad tiels parols en le fait de confirmation, a auer et tener a luy et a ses heires touts les tenements dont mention est fait ē le confirmation, donques il ad estate sole en les tenements, &c. Et pur ceo il est boñ et sure chose en chescun confirmation dauer ceux parolx; A auer et tener les tenements, &c. en fee ou en fee taile, ou pur terme de vie, ou pur terme dans, solonque ceo que le cas est, ou le matter gist.

ANd for this some haue said, that if two joyntenants bee, and the one confirme the estate of the other, that he hath but a joynt estate as he had before, but if hee hath such words in the Deede of confirmation, to haue and to hold to him and to his heires all the tenements wherof mention is made in the Confirmation, then he hath a sole estate in the tenements, &c. And therefore it is a good and sure thing in every Confirmation to haue these words; To haue and to hold the tenements, &c. in fee, or in fee taile, or for terme of life, or for terme of yeares, according as the case is or the matter lieth.

¶ And this Confirmation leaueth the state as it was, and doth not amount to any assurance of the ioynture as some haue said.

34.E.3.tit.Confirm. Pl.15.

¶ *Mes sil ad tiels parols en le fait, &c.* This is plaine and euident enough.

¶ *Et pur ceo il est bone & sure chose, &c.* This is good counsell and worthy to be obserued.

Sect.524.

¶ Here the diuersity is apparant betweene a Confirmation of the estate for life in the land to haue and to hold the said state in the land to him and his heires, this cannot con-

¶ Car al entent dascuns, si hõe lessa terre a vn auter pur terme de vie, et puis confirma son estate

FOr to the intent of some, if a man letteth land to another for life, and after confirme his estate which

ſtate que il ad en ñ la terre a auer et tener ſon eſtate a luy et a ſes heires, ceſt confirmation quant à ſes heires eſt void, car ſes heires ne poient auer ſon eſtat que ne fuit forſque pur terme de ſon vie. Mes ſil confirma ſon eſtate p ceux parolx a auer meſme le terre a luy et a ſes heires, ceſt confirmation fait fee ſimple en ceſt caſe a luy en la terre, pur ceo que les parolx a auer et tener, &c. va a le terre & nemy al eſtate que il ad, &c.

hee hath in the ſame land, to have and to hold his eſtate to him and to his heires, this confirmation as to his heires is voide, for his heires cannot have his eſtate which was not but for terme of his life. But if he confirme his eſtate by theſe words, to have the ſame land to him and to his heires, this confirmation maketh a fee ſimple in this caſe to him in the land, for that the words to have and to hold, &c. goeth to the land and not to the eſtate which hee hath, &c.

large his eſtate, for his eſtate being but for life, that eſtate cannot bee extended to his heires. But in that caſe if he confirme the ſtate for life in the land in the premiſſes of the Deed, and the Habendum is in this ſort, To haue and to hold the land to him and his heires, this ſhall enlarge his eſtate, and create in him a fee ſimple. 18 E.3.40.

Wherein is to bee noted (e) that the Habendum and the premiſſes doe in ſubſtance well agree together, and that the Habendum may enlarge the premiſſes but not abridge the ſame. (e) Vid. Pl.Com. in Throgmortons caſe fol. Worteſleyes caſe.197. Y^t a gift to a man & his heires Habend to him & the heirs of his body is a good estate taile as some hold. ms y: 21: a°

And ſeeing that in conueyances, limitations of remainders are vſuall and common aſſurances, it is dangerous by concepts or nice diſtinctions to bring them in queſtion, as haue in latter time beene attempted.

¶ *Son eſtate*, Vid. Sect.650.

Sect.525.

¶ Item ſi ieo leſſa certaine terre a vn feme ſole pur terme d ſa vie, la quel prent baron, et puis ieo confirma leſtate le baron et ſa feme a auer & tener pur terme de lour deux vies, en ceſt caſe le baron ne tient ioyntment oue ſa feme, mes tient en droit de ſa feme pur terme de ſa vie. Mes ceſt confirmation vera a le baron per voy de remainder p terme de ſa vie, ſil ſuruequiſt ſa feme.

ALſo if I let certaine land to a feme ſole for terme of her life, who taketh huſbād, & after I confirme the eſtate of the huſband & wife, to have and to hold for terme of their two lives. In this caſe the huſband doth not hold joyntly with his wife, but holdeth in right of his wife for term of her life. But this confirmation ſhal enure to the huſband by way of remainder for terme of his life, if he ſurviveth his wife.

¶ HEre is the fourth caſe wherein the Releaſe and Confirmation doe agree, and in this caſe it is to be obſerued that the Baron hath ſuch an eſtate in the land in the right of his wife as hee is capable of a Confirmation to enlarge his eſtate, and therefore if the Confirmation had beene made of his eſtate to him alone to haue and to hold the land to him and to his heires, this had beene good to haue conueyed the fee ſimple to him after the deceaſe of his wife, for if in this caſe a Releaſe be made to the husband and his heires, this is ſufficient to conuey the inheritance of the land to the husband. Vid. Sect.573. 16.H.6.tit.Releaſe 45. 22.E.3.tit.Releaſe. Statham.

¶ *Ne tient ioint-ment oue ſa feme.* For two cauſes, Firſt becauſe the

the wife hath the whole for her life. Secondly, Joyntenants must (as hath beene before said in the Chapter of Joyntenants) come in by one title. But in this case if the Confirmation had been made to the husband and wife, To haue and to hold the land to them two and to their heires, they had beene Joyntenants of the Fee simple, and the husband seised in the right of his wife for her life, for the husband and the wife cannot take by moities during the Couerture.

18.E 3.20.

Br. Garrant 187. a, 6

If a man letteth land to the husband and wife, to haue and to hold the one moity to the husband for terme of his life, and the other moity to the wife for her life, and the Lesso confirme the estate of them both in the land, To haue and to hold to them and to their heires, by this Confirmation as to the moity of the husband, it enureth only to the husband & his heires, for the wife had nothing in that moitie, but as to the moity of the wife, they are Joyntenants, as hath bin said, for the husband hath such an estate in his wiues moity, in her right, as is capable of a Confirmation. But if such a Lease for life be made to two men by seuerall moities, and the Lesso confirme their estates in the Land, To haue and to hold to them and to their heires, they are Tenants in Common of the Inheritance, for regularly the Confirmation shall enure according to the quality and nature of the Estate which it doth enlarge and increase.

18.Ass.p.3. 18.E.3. Confir. 17. 17.E.3.68. 28.E.3.94. 40.E.3. 8.Ass.20.

If a Lease for life be made to A. the remainder to B. for life, and the Lesso confirme their Estates in the land, To haue and to hold to them and their heires, A. taketh one moity to him and his heires and therefore of the one moity he is seised for life, the remainder to B. for life, and then to him and his heires: Of the other moity A. is seised for life, the immediate Inheritance to B and his heires, because as to the moity which B. takes, the same is executed: as if the Reuersion be granted to Tenant for life, and to a stranger, it is executed for one moity (as hath beene said before) and therefore in this case they are Tenants in Common.

39 H.6.9.

If lands be giuen to two men, and to the heires of their two bodyes begotten, and the Donor confirmeth their two estates in the land, To haue and to hold the land to them two and to their heires: In this case some are of opinion, That they shall be Joyntenants of the fee simple, because the Donees were Joyntenants for life, & (say they) the Confirmation must enure according to the estate which they haue in possession, and that was to ioynt. But others hold the contrary, for first they say, That the Donees haue to some purposes seuerall Inheritances executed, though between the Donees suruiuor shall hold for their liues. Secondly they say, That when the whole estate which comprehendeth seuerall Inheritances, is confirmed, the Confirmation must enure according to the seuerall Inheritances, which is the greater and most perdurable estate, and therefore that the Donees shall be Tenants in Common of the Inheritance in this case.

¶ *Per voy de remainder, &c.* Here some question hath beene made of this terme Remainder, without any cause at all, because in Law it is in nature of a Remainder. For in case of a fine, when a reuersion expectant vpon an estate for life in A. is granted to B. Et quæ ad ipsum reuerti debet post mortem A. præfato B. & hæredibus suis remaneant, &c. and a more colourable exception might be taken against this word Remaneant there, than in the case of Littleton

Vid. Sect. 573.

Pl. Com. Colthirsts case. Doct. & Stud. ca. 21.

It is true, That in * 16.H.6. it is called a Reuersion: in (o) 9.E.4. it is called a Remainder: in (p) 6.E.3. it is said, That by the Confirmation an estate accrued to the husband for terme of his life. In (q) 17.E.3. the husband, liuing the wife, shall haue nothing but in abeyance after the death of his wife. But lest there should bee pugna verborum, which learned and wise men euer auoide, all do resolue, That the estate of the husband is good, and that it doth enure by way of increase and inlargement of his estate. And albeit in this case of Littleton, the husband by the Confirmation gaineth an estate for life in remainder (as Littleton termeth it) yet if the husband doth waste, an action of Waste shall lie against him and his wife, notwithstanding the meane remainder, because the husband himselfe committeth the Waste, and doth the wrong: And therefore shall not excuse himselfe for his committing of waste, in respect he himselfe hath the remainder, no more than if a man letteth to A. during the life of B. the remainder to him during the life of C. if he commit waste, an action of Waste shall lie against him.

* 16.H.6.tit.Release 45.
(o) 9.E.4.18.
(p) 6.E.3.9.
(q) 17.E.3.68.b.

17.E.3.68.b. Vi. Sir. Ed. Caries case. li.5.fo.76.b.

Sect. 526.

5.E.3 17.b. Pl.Com. 418.b. 38.H.6.23. 14.H.4.12. 38.E.3.35. Pl.Com. Dame Holes case. 50. Ass.p.15. 4.H.6.5. 7 H.6.1. 9.H.6.52. 37.Li.Ass. 21.H.7.29. 21.E.4.40. 26.H.8.7.

¶ This is the fifth Case wherein the Release and Confirmation doe agree: and it is to bee obserued, That Chattels reals, as Leases for yeares, Wardships, Estates by statute Merchant, Staple, Elegit, Recognizance, Iudgement, Execution, Annuities, Rents, Commons, Offices, Aduowsons, Tithes, Warren, Fishing, Hunting, Fee farme, Villenage, Conditions, Rents charge, Rents seruice, Rents sec, Corodies, Pensions, Medowes, Pasture, Woods, Vnderwoods, Trees, Corne growing, Fruit vpon the trees, Grasse, Hedges, Ditches, Water, Water courses, Mills, Goods, Cattell, Villeins, Villeins regardant, Villeins in gross, Villeins by tenure, Villeins by prescription, Villeins by custome, Villeins by Copyhold, Villeins by Bloud, Villeins by Confession, Villeins by Action, Villeins by Flight, Villeins by Attaint, Villeins by Outlawry, Villeins by Abiuration, Villeins by Excommunication, Villeins by Premunire, Villeins by Treason, Villeins by Felony, Villeins by Murder, Villeins by Rape, Villeins by Robbery, Villeins by Burglary, Villeins by Larceny, Villeins by Trespasse, Villeins by Assault, Villeins by Battery, Villeins by Wounding, Villeins by Maiming, Villeins by Imprisonment, Villeins by Escape, Villeins by Rescue, Villeins by Conspiracy, Villeins by Champerty, Villeins by Maintenance, Villeins by Barratry, Villeins by Forgery, Villeins by Counterfeiting, Villeins by Coining, Villeins by Clipping, Villeins by Washing, Villeins by Rounding, Villeins by Filing, Villeins by Scraping, Villeins by Sweating, Villeins by Weighing, Villeins by Measuring, Villeins by Selling, Villeins by Buying, Villeins by Exchanging, Villeins by Bartering, Villeins by Hiring, Villeins by Letting, Villeins by Lending, Villeins by Borrowing, Villeins by Pawning, Villeins by Pledging, Villeins by Mortgaging, Villeins by Selling, Villeins by Buying, Villeins by Exchanging, Villeins by Bartering, Villeins by Hiring, Villeins by Letting, Villeins by Lending, Villeins by Borrowing, Villeins by Pawning, Villeins by Pledging, Villeins by Mortgaging.

¶ Mes si ieo lesa al Feme sole terre pur terme dans, le quel pˢent baron

But if I let land to a Feme sole for terme of yeares, who taketh husband, & af-

baron, et puis ieo confirma leſtate le baron et ſa feme, a auer et tener la terre pur terme d̄ lour d̄ur vies: en ceſt caſe ils ont ioynt eſtate en le franktenement de la terre, pur ceo que la feñ nauoit franktenement adeuāt, &c.

ter I confirm the eſtate of the huſband and his wife, to have and to hold the land for term of their two lives: In this caſe they have a joynt eſtate in the Freehold of the Land, for that the wife had no Freehold before, &c.

ſhips, and the like, are not giuen to the husband abſolutely, (as all Chattels perſonals are) by the intermarriage, but conditionally if the husband happen to ſuruiue her, and he hath power to alien them at his pleaſure: but in the meantime the husbād is poſſeſſed of the chattels real in her right.

Secondly, That the husband hath ſuch a poſſeſſion in her right of the Chattell, as is capable of a Confirmation, or of a Releaſe.

Thirdly, That the Confirmation in this caſe to the husband and wife for their liues, maketh them Joynetenants for life becauſe a Chattell of a Feme Couert may be diuorced: and ſo note a diuerſity betweene a Leaſe for life, and a Leaſe for yeares, made to a Feme Couert, for her eſtate of Freehold cannot be altered by the Confirmation made to her husband and her, as the terme for yeares may, whereof her husband may make diſpoſition at his pleaſure.

Sect. 527.

¶ Item ſi mon diſſeiſor granta a vn rent charge hors de la terre dont il moy diſſeiſiſt, et ieo reherſant le dit grāt confirma meſme le grant, et tout ceo que eſt compriſe deins meſme le graunt, et puis ieo enter ſur le Diſſeiſor, Quære en ceſt caſe, ſi le Terre ſoit diſcharge de le Rent ou nemy.

ALſo if my Diſſeiſor granteth to one a Rent charge out of the Land whereof he diſſeiſed mee, and I rehearſing the ſaid Grant, confirme the ſame Grant, and all that which is compriſed within the ſame Grant, & after I enter upon the Diſſeiſor, *Quære* in this caſe, if the land be diſcharged of the Rent or no.

¶ This is the fifth caſe wherein the Releaſe and Confirmation doe differ, for a Releaſe to the Grantee in this caſe (a) were voide. It is holden by ſome authority ſince Littler. wrote, That the Diſſeiſee after his re-entry ſhall not auoide the Rent charge againſt his owne Confirmation: and there a generall rule is taken, that ſuch a thing as I may defeate by my entry, I may make good by my Confirmation.

(a) 11.H.7.28.Lib.1. fol.147.Anne Mayows caſe. 3.H.4.10.

If the Feoffee vpon Condition grant a Rent charge in fee, and the Feoffor confirmeth it, and after the Condition is broken, and the Feoffor enter, he ſhall not auoide the Rent charge. And ſo it is

Li.1.fol.147.148.Anne Mayows caſe.

if the heire of the Diſſeiſor grant a Rent charge, and the Diſſeiſee confirmeth it, and after recouer the Land, he ſhall not auoide the Rent: and yet in neither of theſe caſes his entry was congeable at the time of the Confirmation.

Sect.528.

¶ Item ſi vn parſon dun Eſgliſe charge le glebe de ſon Eſgliſe per ſon fait, & puis l'Patron et Ordinarie

ALſo if a Parſon of a Church charge the Glebe land of his Church by his Deed, & after the Patron & Ordinary con-

¶ *Parſon.* Perſona in the Legall ſignification it is taken for the Rector of a Church parochiall, and is called Perſona Eccleſiæ, becauſe he aſſumeth and taketh vpon him the perſon of the Church, and is ſaid

Glanu.li.13.ca 23.24.25. Bract li.4.ca.285 &c. Brit fo 234.b.&c.Flet. li.5.ca.19.20.& lib.6. ca.18.Reg. B.N.B.48.49.

said to be seised in iure Eccle-siæ, and the Law had an ex-cellent end herein, viz. That in his person the Church might sue for and defend her right, and also be sued by any that had an elder and better right, and when the Church is full, it is said to be plena & consulta of such a one Parson thereof, that is, sullandi & tou-tiendi of a Parson, that may vi-cem seu personam eius gerere.

confirmont meſme le grant, & tout ceo que ē compriſe deins ñr grant, donques le grant eſtoyera en ſa force, ſolonque l'pur-port de meſme le graunt. Mes en tiel caſe couient que le Patron eit Fee ſim-ple en lauowſon, car ſil nad eſtate en La-uowſon forſque pur terme de vie, ou en le taile, donque l'grant ne eſtoyera forſque durant ſa vie, & la vie le Parſon que gran-taſt, &c.

firme the same grant, and all that is compri-sed in the same Grant, then the Grant shall stand in his force, ac-cording to the pur-port of the same Graunt. But in this case it be-hoveth, that the Pa-tron hath a Fee simple in the Advowson, for if hee hath but an E-state for life or in taile in the advowson, then the Grant shall not stand, but during his life, and the life of the Parson which granted &c.

Brit. vbi supra.

Persona Impersonata, Par-son Impersonat is the Rec-tor that is in possession of the Church Parochiall, be it pre-sentative, or impropriate, and of whom the Church is full.

8.E.3.26.43. 38.E.3.4. 3.Mar.Dyer, 123.

Here are diuers things to bee noted: First, That the Confirmation is of the grant which in deed is but a meere assent by Deed to the Grant. And therefore it is holden, That if there be Parson, Pa-tron, and Ordinary, and the Patron and Ordinary giue licence by Deede to the Parson to grant a Rent charge out of the glebe, and the Parson graunteth the Rent charge accordingly, this is good, and shall binde the Successor, and yet here is no Confirmation subsequent, but a Licence precedent.

7.H.4.15.

Secondly, The Ordinary alone, without the Deane and Chapter, may agree thereunto, ei-ther by Licence precedent, or Confirmation subsequent, for that the Deane and Chapter hath nothing to doe with that which the Bishop doth as Ordinary, in the life time of the Bishop.

(b) 19.El.Dy.356.357. 11.H.6.9. 33.H.8.tit. Charge Br.38.

Thirdly, (b) But if the Bishop be Patron, there the Bishop cannot confirme alone, but the Deane and Chapter must confirme also, for the aduowson or Patronage is parcell of the pos-session of the Bishoprieke, and therefore the Bishop without the Deane and Chapter, cannot make the Grant good, but only during his owne life, after the decease of the Incumbent, either by Licence precedent, or Confirmation subsequent.

See more of these kinds of Confirmations in my Reports. Li.2.39.& 24. Li.1.153. Lib.4.23.24. Lib.5. fol.31.81.lib.10.6.lib. 11.19. Lib.6.34.

A. Parson of D. is Patron of the Church of S. as belonging to his Church, and present B. who by consent of A. and of the Ordinary grant a Rent charge out of the Glebe, this is not good to make the Rent charge perpetuall, without the assent of the Patron of A, no more than the assent of the Bishop who is Patron, without the Deane and Chapter, or no more than the assent of the Patron, being Tenant in Taile or for life, as Littleton saith. And Littleton here saith, that the Patron that confirmes must haue a Fee simple, meaning to make the charge perpetuall. And Littleton after saith, That in the case of the Parson the fee is in abeyance, and seeing the consent of the Patron is in respect of his interest as heire, it appeareth by Littleton, he may consent vpon Condition, otherwise it is of an Attornement, because that is a bare as-sent. Also if the estate of the Patron be conditionall, and he confirmeth, and after the Condi-tion is broken, his Confirmation is voide.

31.E.3.Grant, 61.26. Ass.38.8.Eliz.Dy.252. Vid.lib. fol. Le ease de Deane & Chapter de Norwich.

Fourthly, He that is Patron must be Patron in Fee simple, for if he be Tenant in Taile, or Tenant for life, his Confirmation or Agreement is not good to bind any Successor, but such as come into the Church during his life. But if the Patron be Tenant in Taile, and discon-tinue the estate in Taile, the Lease shall stand good during the Discontinuance, or if the estate Taile be barred it shall stand good for euer.

Qr: car simple g. ad pouoir ne poit le discontinuer g. ad en taile p. ceo g. & inheritance g. ad en grant. Ayrs 332: a.

12.H.4.11. 19.E.3.7. 7.Eliz.Dyer.238. 11.H.6.9. 10.Eliz.Dy. 6.E.3.10. 7.E 3.29. 9.E.4.6. 2.H.4.11. 38.E.3.19. 25.E.3.54.

But here is to be obserued a diuersity betweene a sole Corporation, as Parson, Prebend, Vicar, and the like, that haue not the absolute Fee in them, for to their Grants the Patron must giue his consent. But if there be a Corporation aggregate of many, as Dean & Chap-ter, Master, Fellowes, and Schollars of a Colledge, Abbot or Prior, and Conuent, and the like, or any sole Corporation that hath the absolute fee, as a Bishop with consent of the Dean and Chapter, they may by the Common Law make any grant of or out of their possessions, without their Founder or Patron, albeit the Abbot or Prior, &c. where presentable: and so it is of a Bishop, because the whole estate and right of the Land was in them, and they may re-spectiuely maintaine a Writ of Right.

If a Bishop hath two Chapters, and he maketh a grant, both Chapters must confirm it, or else the Successor shall avoide it. But if one of the Chapters be dissolued, then the Confirmation of the other sufficeth, but it needeth not the Confirmation of the King who is Founder and Patron of all Bishoprickes. Temps R.2.tit grant. 104. 50 E.3.tit.Assise Statham. 11.Eliz.Dyer 282.

And note a diuersity betwéen a Confirmation of an Estate, and a Confirmation of a Deed, for if the Disseisor make a Charter of feoffment to A. with a Letter of Attorney, and before Liuery the Disseisée confirme the estate of A. or the Deed made to A. this is cleerely voide, though Liuery be made after. But if a Bishop had made a Charter of feoffment with a Letter of Attorny, and the Deane and Chapter before Liuery confirme the Deed, this is a good Confirmation, and Liuery made afterwards is good. And so it hath béen adiudged.

The like Law is of a Confirmation of a Deed of grant of a Reuersion before Attornment.

In the same manner it is if a Bishop at the Common Law had granted lands to the King in fee by Deed, and the Deane and Chapter by their Deed confirme the Deed of the Bishop, and after the Deed of the Bishop is inrolled, this is good, albeit the Confirmation of the Deane and Chapter be not inrolled, for the assent upon the matter is made to the Bishop.

But this Confirmation that Littleton here speaketh of must be made in the life, & during the incumbency of the person, & so in the life of the Bishop, or of any other sole Corporation. But it is to be knowne that Grants made by Parsons, Prebends, Vicars, Bishops Master and Fellowes of any Colledge, Deane and Chapter, Master or Gardeine of any Hospitall, or any hauing any Spirituall or Ecclesiasticall Liuing are restained by (c) diuers Acts of Parliament, so as they cannot grant any rent charge, or to make any alienation, or to make any Leases other then such as are mentioned in those Acts, which you may reade at large. And the expositions vpon the same in my (*) Commentaries. 33 E.3.Confirm.22. 31 E.3.Abb.10.21.H.7.1 Vid.Sect.393.& 643. (c) 13.Eliz.cap.10. 1.Eliz.cap, 18.Eli ca.11. 1.Iac cap.3 Vid.Sect.593 & 648. (*) Li.2.fo.46 lib 4 76. & 120.li 5.9,6.14 li.6. 37. lib.7.8 lib.11.67.

Sect. 529.

Item si home lessa terre pur terme de vie, le quel tenant a term̃ de vie charge la terre oue vn rent en fee, & celuy en le reuersion confirma mesme le grant, le charge est assets bone & effectuall.

Also if a man letteth lād for term of life, the which Tenant for life charge the land with a rent in fee, and he in the reuersion confirme the same grant, the charge is good enough and effectuall.

CHere is a diuersity to bee obserued where the determination of the Rent is expressed in the deed, and when it is implyed in Law. For when Tenant for life granteth a rent in fée, this by Law is determined by his death, and yet a Confirmatiō of the grant by him in the reuersion make that grant good forever without words of inlargement, or clause of distresse, which would amount to a new grant. And yet if the Tenant for life had granted a Rent to another and his heires by expresse words, during the life of the Grantor, and the Lessor had confirmed that grant, that grant should determine by the death of Tenant for life. 26.Ass.Pl.38. 45.Ass. Pl.13. Lib.1 fol.147. Anne Mayowes case. 14.Ass Pl 14.

Tenant for life vpon a Condition grant a Rent in fée, the Lessor confirme the grant, and after the Condition is broken, the Lessor re-enter, he shall not auoide the grant.

Sect. 530.

Item si soit vn perpetuall chantarie, dont lordinarie nad rien a medler ne a faire, Quære si le Patron del chaunte-

Also if there bee a perpetuall Chanterie wherewith the ordinary hath nothing to doe or meddle, *Quære* if the Patron of

CThis is meant of a Chauntery Donatiue wherewith the Ordinary hath not to deale, and by this grant, when Littleton wrote, the Chantery should haue béen charged for ever, because no other had any interest in this Chantery saue Vid.Sect.648.

ſaue onely the Patron and Chauntry Prieſt, and the grant is made Concurrentibus hiis quæ in iure requiruntur. But ſince Littleton wrote al, and all manner of frée Chappels and Chanteries perpetuall, whereof Littleton here ſpeakes, are by (a) Acts of

ry, & le Chapleine de meſme le chauntery poient charge le chauntery oue vn rent charge en perpetuitie.

the Chantery, and the Chapleine of the ſame Chantery may charge the Chantery with a Rent charge in perpetuitie.

(a) 37.H.8.ca.4. 1.E.6.cap.14.

Parliament giuen to the Crowne, and the bodies Politike thereof diſſolued. Sée hereafter, Section 648. more at large of all this preſent Section.

Sect. 531.

HEre Littleton proceedeth according to the former diuiſion to ſhew words that in Law do amount to a Confirmation. And here is to bee obſerued, that ſome words are large and haue a generall extent, & ſome haue a proper and particular application. The former ſort may contain the latter, as Dedi, or Conceſſi may amount to a grant, a feoffment, a gift, a Leaſe, a Releaſe, a Confirmation, a Surrender, &c. and it is in the Election of the party to vſe to which of theſe purpoſes he will.

Bra.li.2.fo.59.b.21.H.6. feoffments & faits 103. 22.H.6.42. 14.H.4.36. 19.H.6.44.7.H.7.16. 32.E.3.brieſe 291. Brooke tit. Confirm. 20. 14.H.7.2. 37.H.6.17. Dyer 8.Eliz.4.H.7.10. 22.E.4.36. 40.E.3.41.

Eſt autem Confirmatio quaſi quædam ratihabitio, ſufficit tamen quandoque per ſe, ſi etiam in ſe contineat donationem, ut ſi dicat quis, dedi & confirmavi, licet iuvari poſſit ex aliqua donatione præcedente.

Bracton lib.2.fol.59.b.

But a Releaſe, Confirmation, or Surrender, &c. cannot amount to a grant, &c. nor a Surrender to a Confirmation, or to a Releaſe, &c. becauſe theſe be proper and peculiar manner of Conueyances, and are deſtined to a ſpeciall end.

ITem en aſcun cas ceſt verbe Dedi ou ceſt verbe Conceſſi, ad meſme leffect en ſubſtance, & vyera a meſme lentent, come ceſt verbe Confirmavi. Sicome ieo ſue diſſeiſie dun carue de terre, & ieo face tiel fait; Sciant præſentes, &c. quod dedi a le diſſeiſor, &c. vel quod conceſſi a le dit diſſeiſor le dit carue, &c. & ieo deliuer tantſolement le fait a luy ſauns aſcun liuery de ſeiſin del terre, ceſt vn bone confirmation, & aury fort en ley, ſicome il auoit en le fait ceſt verbe confirmavi, &c.

ALſo in ſome caſe this Verbe *Dedi*, or this Verbe *Conceſſi* hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent, as this Verbe *Confirmaui*. As if I bee diſſeiſed of a Carve of Land, and I make ſuch a Deed: *Sciant præſentes, &c. quod dedi* to the Diſſeiſor, &c. or *quod conceſſi* to the ſaid Diſſeiſor, the ſaid Carue, &c. and I deliver onely the Deed to him without any liverie of ſeiſin of the land, this is a good cõfirmation, & as ſtrong in Law, as if there had beene in the Deed this Verbe *Confirmavi, &c.*

(e) 32.E.3.brieſe 291. Brooke tit Confirm 20. Vid.leſtat. de Gloc. ca.4. (f) 7.E.3.9.

Bracton.

Dedi & Conceſſi, &c. Here is implyed that there bee more words then Dedi and Conceſſi, that will amount to a Confirmation, as dimiſi. (e) In ancient Statutes and in originall Writs, as in the Writ of Entry in caſu proviſo, in conſimili caſu ad Communem legem, and many others, this word dimiſi is not applyed only to a Leaſe for life, but to a gift in tatle, and to a State in fee. (f) Alſo if a man make a Leaſe to A for yeares, and after by his Deed the Leſſor Voluit quod haberet & teneret terram pro termino vitæ ſuæ: This is adiudged by this Verbe (Volo) to be a good Confirmation for terme of his life, Benigne enim faciendæ ſunt interpretationes cartarum propter ſimplicitatem laicorum, ut res magis valeat quam pereat.

14.H.4.36. Lib.5.fol.15.in Newcomens caſe.

And he to whom ſuch a Deed comprehending Dedi, &c. is made, may plead it as a Grant as a Releaſe, or as a Confirmation at his election.

If a Parſon and Ordinary make a Leaſe for yeares of the Glebe, to the Patron, and the Pa-

Patron by his Deede granteth it ouer, or if the Diſſeiſor graunteth a Rent to the Diſſeiſee, and he by his Deed granteth it ouer, and after re-enter, in both theſe caſes one and the ſame words doe amount both to a Grant and to a Confirmation, in iudgement in Law, of one and the ſame thing, ne res pereat. And ſo it is if a Diſſeiſor make a Leaſe for life, or a gift in taile, the remainder to the Diſſeiſee in fee, the Diſſeiſee by his Deed granteth ouer the remainder, the particular Tenant attorneth, the Diſſeiſee ſhall not enter vpon the Tenant for life, or in taile, for then he ſhould avoide his owne grant, which amounteth to a grant of the eſtate, and a Confirmation alſo.

Sect. 532.

¶ Item ſi ieo leſſa terre a vn home pur terme dans, per force de quel il eſt en poſſeſſion, &c. Et puis ieo face vn fait a luy, &c. Quod dedi & conceſſi &c. le dit terre a auer pur terme de ſa vie, & deliuer a luy le fait, &c. donq̃ maintenant il ad eſtate en le terre pur terme de ſa vie.

ALſo if I let land to a man for terme of yeares, by force whereof hee is in poſſeſſion, &c. and after I make a Deede to him, &c. *Quod dedi & conceſſi, &c.* the ſaid land to have for terme of his life, and I deliver to him the Deed, &c. then preſently hee hath an eſtate in the Land for terme of his life.

¶ Here is the firſt Caſe wherein the Confirmation and the Releaſe doe agree. And is euident and needeth no explication.

Sect. 533.

¶ Et ſi ieo die en le fait, a auer & tener a luy et a ſes heires de ſon corps engendres, il ad eſtate en fee taile, et ſi ieo die en le fait, a auer et tener a luy et a ſes heires, il ad eſtate en fee ſimple, car ceo vera a luy per force de confirmation denlarger ſon eſtate.

AND if I ſay in the Deede, to have and to hold to him and to his heires of his body ingendred, he hath an eſtate in fee taile. And if I ſay in the deed, to have & to hold to him and to his heires, he hath an eſtate in feeſimple. For this ſhall enure to him by force of the Confirmatiõ to inlarge his eſtate.

¶ This alſo is euident and needeth no explication, ſauing that whenſoeuer a Confirmation doth enlarge and giue an eſtate of Inheritance, there ought to be apt words (as Littleton here expreſſeth them) vſed for the ſame.

Sect. 534.

¶ Item ſi home ſoit diſſeiſie, et le diſſeiſor deuie ſeiſie, et ſon heire eſt eins per

ALſo if a mãbe diſſeiſed, & the diſſeiſor die ſeiſed, & his heire is in by diſcent,

¶ *Quant al heire del diſſeiſor, &c. les tenements paſſont per voy de feoffment.* For the

the land ſhall euer paſſe from him that hath the ſtate of the land in him. As if Ceſty que uſe and his Feoffees after the Statute of 1. R. 3. and before the Statute of 27. H. 8. cap. 10 had ioyned in a feoffment, it ſhall be the feoffment of the Feoffees, becauſe the ſtate of the land was in him.

21. H 7 34. b. Pl Com. 59. a in Wimbiſhes caſe.

So it is if the Tenant for life, and he in the remainder or reuerſion in fee ioyne in a feoffment by Deede. The Liuery of the freehold ſhall moue from the Leſſee, and the inheritance from him in the reuerſion or remainder, from each of them according to his eſtate. For it cannot be adiudged by Law, that the feoffment of Tenant for life doth draw the reuerſion or remainder out of the Leſſor or him in remainder, or doth worke a wrong, becauſe they ioyned together.

Pl. Com. 59 a. Pl. Com. 140. in Brownings caſe. 2. H. 5. 7. 13. H. 7. 14. 13 E. 4. 4 a. 27. Hi 8 13. M. 16. & 17. Eliz. 339.

If there bee Tenant for life, the remainder in taile, the remainder in taile, &c. and Tenant for life and he in the remainder in taile leuie a Fine, this is no diſcontinuance or deueſting of any eſtate in remainder, but each of them paſſe that which they haue power and authority to paſſe.

Lib. 1. fo. 76. Bredon. caſe.

A. Tenant for life the remainder to B. for life, the remainder in tayle, the remainder to the right heires of B. A. and B. ioyne in a Feoffment by Deede, albeit it may be ſaid that this is the feoffment of A. and the Confirmation of B. and conſequently hee in the remainder in taile cannot enter for the forfeiture during the life of B. But becauſe B. ioyned in the Feoffment which was tortious to him in the remainder in taile, and is Particeps criminis, therefore they forfeited both their eſtates, and he in the remainder in taile might enter for the forfeiture. But if he in the reuerſion in fee and Tenant for life ioyne in a Feoffment by paroll, this ſhall be (as ſome hold) firſt a ſurrender of the eſtate of Tenant for life, and then the feoffment of him in the Reuerſion, for otherwiſe if the whole ſhould paſſe from the Leſſee, then he in the reuerſion might enter for the forfeiture, and euery mans act (Vt res magis valeat) ſhall be conſtrued moſt ſtrongly againſt himſelfe.

17. Eliz. Dyer 339.

Indit is to be obſerued that Littleton here putteth a diſcent, ſo as the entry of the Diſſeiſee is not lawfull, for if the Diſſeiſor and Diſſeiſee ioyne in a Charter of feoffment, and enter into the land, and make Liuery, it ſhall be accounted the feoffment of the Diſſeiſee, and the confirmation of the Diſſeiſor,

Quere

diſcent, et puis le diſſeiſee & lheire le diſſeiſor font iointment vn fait a vn auter en fee, et liuery de ſeiſin ſur ceo eſt fait (quant al heire le diſſeiſor, que enſealaſt le fait) les tenemẽts paſſont et vront per meſme le fait p voy de feoffment, et quant al diſſeiſee que enſealaſt meſme le fait, ceo ne vera ſinon p voy de confirmation. Mes ſi le diſſeiſee en ceſt cas port briefe dentre en l' Per et Cui enuers lalienee del heir̃ le diſſeiſor: Quære cõmẽt il pledra cel fait enuers l' demandant per voy de confirmation, &c. Et ſaches mon fits, q̃ eſt vn des pluis honorables, laudables, & profitables choſes en noſtre ley, de auer le ſcience de bien pleder en actions reals et perſonals, et pur ceo ieo toy counſaile eſpecialment de mitter ton courage et cure ỏ ceo apprender.

and after the diſſeiſee, and the heire of the diſſeiſor make iointly a Deede to another in fee, and livery of ſeiſin is made upon this, (as to the heire of the diſſeiſor that ſealed the deed) the tenemẽts doe paſſe & enure by the ſame deed by way of feoffment, and as to the diſſeiſee who ſealed the ſame Deed, this ſhall enure but by way of confirmation. But if the diſſeiſee in this caſe brings a writ of entrie in the *Per* and *Cui* againſt the alienee of the heire of the diſſeiſor: *Quære* how he ſhal plead this Deed againſt the Demandant by way of confirmatiõ, &c. And know my ſon, that it is one of the moſt honorable, laudable, & profitable things in our Law, to have the ſcience of well pleading in actions reals & perſonals, and therefore I counſaile thee eſpecially to imploy thy courage and care to learne this.

¶ *Quære coment il pledera ceſt fait, &c.* Hee may pleade the feoffment of the heire of the Diſſeiſor, and the confirmation of the Diſſeiſee as it hath beene pleaded and allowed. Lib.1.fo.146,147. Mayowes caſe.

¶ *Et ſaches mon fits, que eſt vn de pluis honorable, &c.* Here is to bee obſerued the excellency of good pleading, and Littletons graue aduice, that the Student ſhould imploy his courage and care for the attaining thereof: which hee ſhall attaine vnto by three meanes: Firſt by reading, ſecondly by obſeruation, and thirdly by vſe and exerciſe. For in ancient time the Sericants and Apprentices of Law did draw their owne pleadings, which made them good pleaders. And in this ſenſe Placitum may be deriued a Placendo, quia omnibus placet. See my Preface to the 9. Booke of my Reports. 36.E.3.f.15

Now ſeeing good pleading is ſo honourable and excellent, and that many a good cauſe is daily loſt for want of good and orderly pleading, it is neceſſary to ſet downe ſome few rules (amongſt many) of the ſame, to facilitate this learning, that is ſo highly commended to the ſtudious Reader. For when I diligently conſider the courſe of our bookes of yeares & termes from the beginning of the raigne of Edw.3. I obſerue, that more tangling and queſtions grow vpon the manner of pleading, and exceptions to forme, than vpon the matter it ſelfe, and infinite Cauſes loſt or delayed for want of good pleading. Therefore it is a neceſſary part of a good common Lawyer to be a good Protonotary. And now wee will performe our promiſe.

The order of good pleading is to be obſerued, which being inuerted great preiudice may grow to the party tending to the ſubuerſion of Law. Ordine placitãdi ſeruato, ſeruatur & ius. &c.

Firſt in good order of pleading a man muſt pleade to the iuriſdiction of the Court. Secondly to the perſon, and therein firſt to the perſon of the Plaintife, and then to the perſon of the Defendant. Thirdly to the Count. Fourthly to the Writ. Fifthly to the Action, &c. (a) which order and forme of pleading you ſhall reade in the ancient Authors agreeable to the Law at this day, and if the Defendant miſorder any of theſe, he loſeth the benefit of the former.

The Count muſt be agreeable and conforme to the Writ, the barre to the Count, &c. and the iudgement to the Count, for none of them muſt be narrower or broader than the other.

A Count or Declaration, which anciently and yet is called Narratio, ought to containe two things, (b) viz. Certainty and Verity, for that it is the foundation of the ſuite, whereunto the Aduerſe party muſt anſwer, and whereupon the Court is to giue his iudgement: (c) Certa debet eſſe intentio & narratio, & certum fundamentum, & certare quæ deducitur in iudicium. But it muſt be vnderſtood that there be three kinde of Certainties: Firſt to a common intent, and that is ſufficient in a barre which is to defend the party and to excuſe him. (d) Secondly a certaine intent in generall, as in Counts, Replications, and other pleadings of the Plaintife, that is to conuince the Defendant, and ſo in Indictements, &c. Thirdly, a certaine intent in euery particular, as in Eſtoppels. *V. fol. 342 a.b. conc. Eſtoppels.*

(e) He that pleadeth a plea in abatement of the Writ (which of ancient times was, and yet is called Breve) or a plea after the latter continuance, ought to pleade it certainly.

(f) The ancient formes of Counts are to be duely obſerued, as Cum dimiſit, or Cum dedit, and not to ſay, that he was ſeiſed and demiſed, &c. (And yet if he ſay ſo, it maketh not the Count vicious) (g) but in a barre replication or other kinde of pleading, the party muſt alledge a ſeiſin in the Leſſor or Donor, and ancient formes of pleading are alſo to be obſerued.

(h) Counts or ſuch as be in nature of Counts (as an Auowry, wherein the Defendant is an Actor) need not to be auerred, but all other pleas in the Affirmatiue ought to be auerred. Et hoc paratum eſt verificare, &c. but pleas merely in the Negatiue ought not to be auerred, becauſe a Negatiue cannot be proued.

(i) Where there is but one Tenant & one Defendant, he cannot haue two ſuch pleas, as each of them doe goe to the whole, but where there are diuers, each of them may pleade ſeuerall pleas which extend to the whole.

(k) That which is alledged by way of conueyance or inducement to the ſubſtance of the matter need not to be ſo certainly alledged, as that which is the ſubſtance it ſelfe.

(l) Euery plea muſt be direct, and not by way of argument, or rehearſall.

(m) Where a matter of Record is the foundation or ground of the ſuite of the Plaintife, or of the ſubſtance of the plea, there it ought to be certainly and truly alledged, otherwiſe it is where it is but conueyance. But the proceedings and ſentences in the Eccleſiaſticall Courts may be alledged ſummarily, as that a Diuorce was had between ſuch parties, for ſuch a cauſe and before ſuch a Iudge, and Concurrentibus his quæ in iure requiruntur, for the Iudge muſt be alledged, to the intent the Court may write to him if it be denied.

Good matter muſt be pleaded in good forme, in apt time, and in due order, or otherwiſe great aduantages may be loſt.

(a) Bracton li.5.fo.400. Britton.fo.41 a.& 122. Fleta li.6.ca.35,36,&c. 40.E.3.9.b. 17.E.3.74. 8.E.3.5.& 9. 35.H.6.12.

(b) Pl.Com.fo.121,122. 3.E.4.21. Vid.lib.5.fo.120,121.

(c) Bracton lib.2 fo.140.

(d) Lib.5.120,121. Lonbs caſe.Pl.Com.56. Wimbiſhes caſe.

(e) 7.H.6.17. 32.H.6. 12.15.Pl.Com.33.b.

(f) 34.H.6.48. 8.H.5. 4 b.21.E 4.52.5 E.3. 25.39.H.6.3.10.H.6.2. 21.H.7.26.

(g) 48.E.3.8. 2.H.4.13. 6.H.4 2.b. 10.E 4.2. F.N.B.156.c.

(h) Pl.Com Brets caſe. 342. 27.H.8.27. 27.H.6.9 H.7.

(i) 40.E.3.31,32,33. 41.E.3.11. 9.H 6 46. 27.E.3.81. 41.E.3.23. 45.E.3.Double plea.39. 43.E.3 21. 36.H 6 29. 37.H.6.23. 33 H.6.51. 15.E.4.25. 7.H.4.12. 41.E 3 Double plea.78.

(k) Pl.Com.81. 11.H.4. 89.34.H 6.48. 19.R.2. Action ſur le caſe.52. 22.E 3.19. 30 E.3.9.

(l) 5 H 7 8. 6.E.4.2. 21.E.4 44. 27.H.8 4. 22.H.6 17.E.4.7. 22.E.4.8.

(m) Pl.Com.65.a b.& 100.376.& 410. 22.H.6.38. 19.H.6.49. 37.H.6.14. 36.H.6.5. 21.E.4.54 11.H.6.15. 38 H.6.23. 42.Aſſ.3. 48.E.3.11. 4.E.4.12. 9.E.3.46. 21.E.4.52. 35.H.6.35. 10 H.7. 9.15. 11 H.7 8. 22.E 3.2. 34.H 6.27. 12.H.8.5.6.7.E.4.32. 9.E.4.24. 8 E 4.31. 8.Aſſ.29. 5.E.4.70. 3.E.4.1.

(n) Generall estates in Fée simple may be generally alledged, but the commencement of Estates tayle, and other particular estates regularly must be shewed, vnlesse in some cases where they are alledged by way of inducement, and the life of Tenant in taile, or for life, ought to be auerred.

(o) When any speciall and substantiall matter is alledged by either party, That ought to be especially answered, and not to be passed ouer by a generall pleading.

(p) The Plea of euery man shall be construed strongly against him that pleadeth it, for euerie man is presumed to make the best of his owne case: Ambiguum placitum interpretari debet contra proferentem.

(q) Euery Plea that a man pleadeth ought to be triable, for without triall the cause can receiue no end: Et expedit reipublicæ ut sit finis litium.

(r) The Tenant before his default saued, may plead all Pleas which preuent the Writ abated, as death, &c. or matters apparent in the Writ, but no Plea, which prouc it abatable, as taking of husband, &c.

(s) When a man is authorised to doe any thing by the Common Law, by Grant, Commission, Act of Parliament, or by Custome, he ought to pursue the substance and effect of the same accordingly.

(t) All necessary circumstances implied by Law in the Plea need not to be expressed, as in the Plea of a feoffment of a Mannor, Iuery and Attornment are implied.

(u) When a Count, Barre, Replication, &c. is defectiue in respect of omission of some circumstance, as time, place, &c. there it may be made good by the Plea of the aduerse party, but if it be insufficient in matter, it cannot be salued.

(w) Euery man shall plead such Pleas as are pertinent for him, according to the quality of his case, estate, or interest, as Bishops, Tenants, Incumbents, Ordinaries, and the like.

(x) Surplusage shall neuer make the Plea vitious, but where it is contrariant to the matter before. v. Rep. 4. fol. 42. Heydon's case.

(y) That which is apparant to the Court by necessary collection out of the Record need not to be auerred.

(a) If man is bound to performe all the couenants in an Indenture: if all the couenants be in the affirmatiue, he may generally plead performance of all, but if any be in the negatiue, so many he must plead specially (for a negatiue cannot be performed) and to the rest generally. (b) So if any be in the disiunctiue, he must shew which of them he hath performed. So if any are to be done of Record he must shew that specially, & cannot inuolue that in general pleading.

(c) In many cases the Law doth allow generall pleading, for auoiding of prolixity and tediousnesse, and that the particular shall come on the other side.

(d) Pleadings which amount to the generall issue are not to be allowed, but the generall Issue is to be entred, Vid. Sect. 10 485.499.

(e) Euery Plea ought to haue his proper Conclusion as a Plea to the Writ to conclude to the Writ, a Plea in Barre to conclude to the Action, an Estoppell to relie vpon the Estoppels, Et sic de similibus.

(f) When the Conclusion of a Plea, Et issint, Et sic, is in the affirmatiue, it shall not waue the speciall matter, for there the speciall matter is the substance and foundation of the Conclusion, and affirmed by the same. But where the Conclusion is in the negatiue, there the speciall matter regularly is waued.

(g) Whensoeuer speciall matter is pleaded, and the Conclusion (Et sic) is to the point of the Writ or Action, the speciall matter is waued.

The names of legall Records are, a Writ, a Count, a Barre, a Replication, a Reioinder, a Rebutter a Surrebutter, &c.

(h) New and subtill deuices and inuentions of Pleading ought not to alter any Principle of Law, whereof you haue heard plentifully before. v. 282. b.

The Count or Declaration is an exposition of the Writ, and addeth time, place, and other necessary circumstances, that the same may be triable, and any imperfection in the Count doth abate the Writ. v. sect. 67

Pleadings are diuided into Barres, Replications, Reioynders, Surreioynders, Rebutters, and Surrebutters, &c. They are words of Art, and are called Barres, Barræ, so called because it barreth the Plaintife of this Action. Replicationes, a Replicando; Reiunctiones, a Reiungendo; Rebutter, of the French word Rebouter, i. a Repellendo, To put backe or auoide, and so of Surrebutter. + v. f. 365. a.

But each party must take heed of the ordering of the matter of his pleading, lest his Replication depart from his Count, or his Reioynder from his Barre, Et sic de cæteris.

(i) In ancient Writers a Barre is called Exceptio peremptoria, a Replication was then called Replicatio, as now it is: a Reioynder, Triplicatio; a Surreioynder, Quadriplicatio, & sic ulterius in infinitum. Ms. le Civilians appell le Reioinder Duplicatio, & le Surreioinder Triplicatio

(n) 35.H.6.35. 21.E.4. 51.9.H.4.5. 15.H.6.73. 5.E.4.12.10.E.4.18. 13.H.7.18. 36.H.8. Pleading Br.160.
(o) V.Sect.193. 3.H.6. 47. 41.E.3.22.9 Ass.9. 22.Ass.45. 2.E.3.42. 23.E.3 Anc.Demesne 15. 20.E.3.ib.45. 7.H.7.8. lib.10.fo.91.li.11.fo.10.
(p) 3.H.7.3. 26.Ass.10. 14.H.4.4.b. 17.H.6.8.b. 21.H.6.Debt 43.7.H.6. 24.31. 35.H.6.48. 47.E.3.14. Pl.Com.46.2. Lib.3.fo.59 Linc.Col. case.
(q) 22.E.4.40. 33. 20 E.4.10. 21.E.4.36. 22.H.6.50
(r) 40.E.3.40.43.46. 41.E.3.2. 18.E.3.16. 26.E.3.68.42 E.3.3. 10.46. 6.E 3.37. 8.E 3.20. 10.E.3.60. 14.H 4.15. 12 E.4.1. 38.E.3 28. 7.H.7.3.
(s) 10.E.4.3. 27.H.6.8. H.7.13. 9.H.7.16. 37.H.6.1. 27.H 8.13. 21.H.7.25. 11.H.4.33. Pl.Com.79. 16.E.4.10. 1.H.7 33. 20.H.7 1.
(t) 6.E.4.4,5. 21.E 4.54. 22.H.6.47. 11.H.6.8. 2.E.3.50.b. 23.Ass.7. 3.Eliz.Dyer 184.
(u) Pl.Com.149 b.& 195. a 37.H.6.38.
(w) 18.E.4.16.b. 22.E.4.2. 76.5.H.7.13. 38.H.6.17,18,19.
(x) 18.E.3.34.Pl.Com. 229.b. Lib.8.133. Turners case.
(y) 5.H.7.34. 5.E.3.26. 21.H 6.28.
(z) 19. H.6.30.32. Pl.Com.232 b.& fo.502.per Dyer & 503.
(a) 13.H.4.17. 10.E 4. 18.33.H.6.54. 35. H 6. 30.21.H.7.32. Bract. li.3.fo.154.Pl.Com. 87.b.26.H.8.Gard.58.
(b) 2.H.7.15. 4 H.7.12. 10.H.7.12.13.H.7.19. 26.H.8.5.b.
(c) 12.H.8.6,7. 2.R.3. 17. 14.E.4.7.9 E.4.19.
(d) 44.E.3.2. 34.H.6 5. 10.H.6.6.& 17. 12.E.4. 11.14. 14.H 8.24. 7 E.3.12. 17.E.3.44.
(e) 18.H.6.33. 22.H.6. 5. 36.H.6.17. 38.H.6. 18.25. 5.E.3.15,16. 22.Ass.33. 2.Eliz.Dyer 184.
(f) Pl.Com.14,15. 2.E.4.18. 39.E.3.14.32. 33. 8.E.3.57. Qu Imp. 25. 18.H.6.30.7.4.18. 38.Ass.14. 24 E.3.8. 22.E.3.13. 38.H.6.25. 32.H.6.14. 19.H. 8.7. 27.H.8.11.b.
(g) 7.E.4.26. 11.H.7.4. 12.H.7.6. 33.H.6.9. 37.43.
(h) Vid. Sect.485.
(i) Bract.li.5.fo.400. Flet.li.6.cap.37.

v. West 2 pt Sit. Chancery sect. 56. & 57. & Cowell Interp. verbis Reioinder & Surreioinder

A departure in pleading is said to be when the second Plea containeth matter not pursuant to his former, and which fortifieth not the same, and thereupon it is called Decessus, because he departeth from his former Plea, and therefore whensoeuer the Reioynder (taking one example for all) containeth matter subsequent to the matter of the Barre, and not fortifying the same, this is regularly a departure, because it leaueth the former, and goeth to another matter. As if in an Assise the tenant plead a discent from his father, & giueth a colour, the Demandant intituleth himselfe by a Feoffement from the tenant himselfe, the Plaintife cannot say, That that Feoffement was vpon Condition, and to shew the Condition broken, for that should be a cleere departure from his Barre, because it containeth matter subsequent. But in an Assise, if the Tenant pleadeth in Barre, That I.S. was seised & infeoffed him, &c. and the Plaintife sheweth, That he himselfe was seised in Fee, vntill by I.S. disseised, who infeoffed the Tenant, and he re-entred, the Defendant may plead a release of the Plaintife to I.S. for this doth fortifie the Barre.

39.E.3.13.b. 39.H.6.15. 6.H.7.8. 21.H.6.32. Pl.Com 105. 1.Mar. Dyer 95. 28.H.8.ib.31.

Def:

6.H.7.8. 3.H.6. Departure 2.

If a man plead performance of Couenants, and the Plaintife reply, That he did not such an act according to his Couenant, the Defendant saith, That he offered to doit, & the Plaintife refused it, this is a departure, because the matter is not pursuant, for it is one thing to doe a thing, and another to offer to doe it, and the other refused to doe it: therefore that should haue beene pleaded in the former Plea. Vide & Caue in a Quare impedit, what Plea shall be safely pleaded in primo placito.

8.El.Dy.253.23.El.Dy. 271.6.E.3.3. 40.E.3.32. 43.E.3.11. 1.E.4.4. 18.E.4.24. 5.H.7.27. 8 H.6.11. 33.H.6.14.

When a man in his former Plea pleadeth an estate made by the Common Law, in the second Plea regularly he shall not make it good by an Act of Parliament. So when in his former Plea he intituleth himselfe generally by the Common Law, in his second Plea he shall not inable himselfe by a Custome, but should haue pleaded it first.

Pl.Com.105.b.Fulmerstones case. 21.H.7.25. 27.H.8.3. 21 H.7.17. 37 H.6.5. 38.H.6.25.

If a man plead an estate generally, (as for example a Feoffement in Fee) he in his second Plea shall not maintain it by other matter tant amount in Law, as by a Disseisin & Release, or by a Lease and Release, or a gift in Tayle in Barre, and in the second Plea a Recouery in value, for this is a departure: but he in that case shall count of a gift, and maintaine it in his Replication by a Recouery in value, because he could haue no other Count.

21.H.7.21. 1.E.4.4. 5.H.7.5. 7.H.7.2.

See more of this matter, where the Plaintife varying from time or place alledged in the count of Actions transitory, shall commit no departure

Vid.Sect.485.

The Plea that containes duplicity or multiplicity of distinct matter to one & the same thing, whereunto seuerall answers (admitting each of them to be good) are required, is not allowable in Law. And this rule you see extendeth to Pleas perpetuall or peremptory, and not to pleas dilatory, for in their time and place a man may vse diuers of them, and hereof ancient Writers * speake notably; Sicut Actor vna Actione debet experiri saltem illa durante, sic oportet tenentem vna exceptione, dum tamen peremtoria; (quod de dilatoriis non est tenendum) quia si liceret pluribus vti exceptionibus peremptoriis simul & semel, sicut fieri poterit in dilatoriis, sic sequeretur, quod si in probatione vnius defecerit, ad alium probandam possit habere recursum: quod non est permissibile, non magis quam aliquem se defendere duobus baculis in duello, cum vnus tantum sufficiat.

Pl.Com.139.142.

* Fleta.li.6.ca.35. Bracton li.1.fol.400.

But where the Tenant or Defendant may plead a generall Issue, there vpon the generall Issue pleaded, he may giue in euidence as many distinct matters, to barre the Action of right of the Demandant or Plaintife, as he can.

A speciall Verdict may containe double or treble matter, and therefore in those cases the tenant or defendant may either make choice of one matter, and to plead it to barre the Demandant or Plaintife, or to plead the generall Issue, and to take aduantage of all, or he may plead to part one of the Pleas in Barre, and to another part another Plea, and his conclusion of his Plea shall auoide doubleneese, and hereby neither the Court nor the Jury is so much inueigled as if one Plea should containe diuers distinct matters. And if the Tenant make choice of one plea in Barre, and that be found against him, yet he may resort to an Action of an higher nature, and take aduantage of any other matter. And the Law in this point is by them that vnderstand not the reason thereof misliked, saying, Nemo prohibetur pluribus defensionibus vti.

17.E.73.

39.H.6.27.

And it is worthy of obseruation, That in the raignes of Edward the second, Edward the first, & vpwards, the Pleadings were plain & sensible, & nothing curious, euermore hauing chiefe respect to matter, and not to formes of words, and were often holpen with a Quæstum est, and then the questions moued by the Court, and the answers by the parties were also entred into the Rolle. But euen in those dayes the formes of the Register of originall Writs were then punctually obserued, and matters in Law excellently debated and resolued. and where any great difficulty was, then it was resolued by all the Iudges & Sages of the Law (who were for matters in Law called Concilium Regis) and their assembly and resolution was entred into the Rolle. As for example, In the great case in a Quare impedit, betweene the King & the Prior of Worcester, concerning an Appropriation, whether it were a Mortmaine, the Record saith, Ad quem diem venit prædictus Prior per Attornatum suum, &c. Et examina-

Hil.32.E.1.Cor.Reg.in fine Rotul.

examinatis & intellectis recordo & processu coram toto Concilio tam Thesaurario & Baronibus de Scaccario, quam Cancellario, ac etiam Iusticiariis de vtroque Banco inspecta causa, pro qua, pro Domino Rege dicunt, quod ad ipsum Regem pertinet præsentare, &c. consideratū est. &c. For in those dayes though the Chancellor and Treasurer were for the most part men of the Church, yet were they expert and learned in the Lawes of the Realme.

As for example, in the time of the Conqueror, Egelricus Episcopus Ciceſtrensis vir antiquissimus, & in Legibus sapientissimus, as elsewhere I haue said.

(a) Ockam.fo. 17.

(a) Nigellus Episcopus Eliensis Hen.1. Thesaurarius in temporibus suis incomparabilem habuit Scaccarii scientiam, & de eadem scripsit optimè.

(b) Pasch.5.R.1. Cor. Rege.

(b) Henricus Cant. Episcopus, H. Dunelm' Episcopus, Willielmus Eliensis Episcopus. G. Roffens. Episcopus.

(c) 1.H.3. Rot.pat. Bract.sæpe.

(c) Martinus de Patishul Clericus Decanus diui Pauli London' constitutus fuit capitalis Iustic' de Banco, quia in Legibus huius Regni peritissimus.

(d) Bract sæpe.

(d) Will'us de Raleigh Clericus Iusticiarius Domini Regis.

(e) 8.E.3.34.

(e) Iohannes Episcopus Carliensis tempore H.3.

Robertus Passelewe Episcopus Ciceſtrensis tempore H.3.

(f) Rot.pat.24.H.3.

(f) Robertus de Lexintonio Clericus constitutus capitalis Iustic' de Banco.

(g) Liber eius de Legibus extat script.temp. E.1.

(g) Iohannes Britton Episcopus Hereford.

(h) Rot.pat.17 E.2.

(h) Henricus de Stanton Clericus, constitutus fuit capitalis Iusticiarius ad placita, with many others. And so were diuers and many of the Nobility, who when matters of great difficultie were brought into the vpper House of Parliament by Writ of Error, Adiornment, or other Parliamentary course, did by the assistance of the reuerend Iudges, whocuer attended in that Court, iudge and determine the same, as by former and ancient Records, and specially by the said Record of 5.R.1. doe manifestly appeare, and therefore the Lords of Parliament were called for those purposes, Concilium Regis, and like to the aforementioned Record there be very many.

In the raigne of Edw. the third, Pleadings grew to perfection both without lamenesse and curiosity, for then the Iudges and professors of the Law were excellently learned, and then knowledge of the Law flourished, the Serieants of the Law, &c. drew their owne pleadings, and therefore truly said that reuerend Iustice Thirning, in the raigne of H.4. that in the time of Edw.3. the Law was in an higher degrée than it had been any time before; for (said he) before that time the maner of Pleading was but feeble in comparison of that it was afterward in the raigne of the same King.

12.H.4.3.

In the time of Hen. the Sixt the Iudges gaue a quicker eare to Exceptions to Pleadings, than either their Predecessors did, or the Iudges in the raigne of Edw. the Fourth, when our Author flourished, or since that time haue done, giuing no way to nice exceptions, so long as the substance of the matter were sufficiently shewed. As in the raigne of King Edward the Third, by an Act of Parliament * it is prouided, That Counts or Declarations should not abate so long as the matter of the Action be fully shewed in the Declaration & Writ, so since our Author wrote, in the raigne of Queene Elizabeth prouision is made, That after Demurrer the Iudges shall giue iudgement according to the right of the cause and matter in Law, without regarding any imperfection, defect, or want of forme in any Writ, Return, Plaint, Declaration, or other pleading or course of proceeding whatsoeuer, except such as the party demurring shall specially shew. In which Act, Appeals and Indictments of Felony, Murder, or Treason concerning mans life, and the forfeiture of his lands and goods, are excepted. An excellent and a profitable Law concurring with the wisedome & iudgement of ancient and latter times, that haue disallowed curious & nice exceptions tending to the ouerthrow or delay of Iustice, apices iuris non sunt iura: yet it is good for a learned professor to make all things plain & perfect, and not to trust to the after aid or amendment by force of any Stat. lest his Clients cause miscarieth not therewith; and as it is in Physicke for the health of a mans body, so it is in remedies for the safety of a mans cause. In Law, Præstat cautela quam medela.

* 36.E.3.c2.15. 46.E.3. 21.Dy.299.li.8.fo.161. Lib.10.fo.131.

But now let vs returne to our Author.

Sect. 535,536,537.

ITem si loyent Seignior & Tenant mesque le seignior confirma lestate que l' tenãt ad en les tenements, vncore le Seigniorie entierment demurt a le

ALso if there be lord & tenant, albeit the Lord confirme the estate which the Tenaunt hath in the Tenements, yet the Seigniorie remaineth entire to the

Li.10.fo.88.Pl.Com. 421.

a le Sñr come il fuit adeuant. Lord as it was before.

Sect. 536.

CEſ meſme le manner eſt, ſi home ad vn rent charge hors de certaine terre, & il confirma leſtate que le tenant ad en la terre, vncore demurt a le confirmor le rent charge.

IN the ſame manner is it, if a man hath a Rent charge out of certaine Land, and hee confirme the eſtate which the Tenant hath in the Land, yet the Rent charge remaineth to the Confirmor.

Sect. 537.

CEſ meſme le manner eſt, ſi vn home ad common de paſture en auter terre, ſil confirma eſtate de le tenant de la terre, rien departer̃ de luy de ſon common, mes ceo nient obſtant le common demurt a luy come fuit adeuant.

IN the ſame manner it is, if a man hath common of paſture in other land, if hee confirme the eſtate of the Tenant of the Land nothing ſhall paſſe from him of his Common, but notwithſtanding this, the Common ſhall remaine to him as it was before.

CHere is the firſt Caſe wherein the Releaſe and Confirmation doe differ, for by the releaſe of the Seigniory, Rent charge or Common are extinct. And ſo theſe three Sections be euident and need no explication, ſauing that ſome doe gather vpon theſe two laſt Sections and the next enſuing, that a man cannot abridge a rent charge or cõmõ of Paſture by a Confirmation as he may do a Rent Seruice in reſpect of the priuity betweene the Lord and Tenant, ſo as (ſay they) a tenure may be abridged by a Confirmation, but not a Rent charge or Common: and therefore Littleton beginneth the next Section with an Aduerbe aduerſatiue, viz. (mes but) &c. But a man may releaſe part of his Rent charge, or Common, &c.

Sect. 538.

CMes ſi ſoient Seignior & tenant, le quel tenãt tient de ſon Seignior per le ſeruice de fealtie & 20.s.õ rent, ſi le Seignior per ſon fait, confirma leſtate le tenant, a tener per 12.d. ou per vn denier, ou per vn maile: en ceſt caſe le tenant eſt diſcharge

BVt if there be Lord and tenant which Tenant holde thof his Lord by the ſeruice of fealtie and 20. ſhillings rent, if the Lord by his Deed confirme the eſtate of the Tenant to hold by 12. pence or by a penny, or by a halfe peny: In this caſe the Tenant is diſcharged of all the

CAnd the reaſon wherefore no ſeruice of another cannot be reſerued vpon the Confirmation is, becauſe as long as the ſtate of the Land continueth it cannot by the Confirmation of the Lord be charged with any new ſeruice. So as it is euident that the Lord by his Confirmation may diminiſh and abridge the ſeruices, but to reſerue vpon the Confirmation new ſeruices he cannot, ſo long as the former eſtate in the Tenancie continueth. And as where a Confirmation doth inlarge

28.E.3 92.93. 26.Aſſ.37. 6.Eliz.Dier.230.b.7.E.4. 25.a.21.E.4.62.per Brian. 10.E.3.tit.auowrie 109.

I.539

inlarge an eſtate in land, there ought to be priuitie, as hath beene ſaid, ſo regularly where a Confirmation doth abridge ſeruices, there ought to be priuitie alſo.

And therefore here Littleton putteth his caſe of Lord and Tenant betweene whom

de touts les auters ſeruices, & ne rendra rien a le Seignior, forſque ceo q̃ eſt compriſe deins meſme le Confirmation.

other Seruices, and ſhall render nothing to the Lord, but that which is compriſed in the ſame Confirmation.

7.E.3.19.22.E.3.18.6. there is priuitty. And therefore if there be Lord, Meſne and Tenant, the Lord cannot confirme the eſtate of the Tenant to hold of him by leſſer ſeruices, but this is void, for that there is no priuitie betweene them, and a Confirmation cannot make ſuch an alteration of Tenures.

4.E.3.19. And the caſe in 4.E.3. maketh nothing againſt this opinion, for there the caſe in ſubſtance is this, Iohn de Bonuile held certaine Lands of Ralfe Vernon, and before the Statute of Quia emptores terrarum, leuied a Fine of the ſame lands to the Abbot of Cogſall and his Succeſſors to hold of the chiefe Lord (which was Ralfe Vernon) by the ſeruices due and accuſtomed. Ralfe Vernon made a Charter to the ſaid Abbot in theſe words, Conceſſi etiam eidem Abbati & ſucceſſoribus ſuis relaxaui & quietum clamaui totum ius, &c. quod habeo, vel potero habere in omnibus tenementis quæ idem Abbas habet de dono Iohannis de Bonuile. Tenendum de me & hæredibus meis in puram & perpetuam Eleemoſynam. And adiudged that it was a good tenure in Frankalmoigne, which caſe prooueth nothing that the Lord Paramount may by his Confirmation to the Tenant perauaile extinct the Meſnaltie (as it is abridged by Maſter Fitzherbert in the title of Confirmation, Pl.21.) for the immediate Lord did there make the ſaid Charter, and not any Lord Paramount. (And therefore it is euer good to relie vpon the Booke at large, for many times Compendia ſunt diſpendia, and Melius eſt petere fontes, quam ſectari riuulos) And of this opinion was Maſter Plowden vpon good aduiſement and conſideration.

4 E.3.19. 9.E.3.1.12.E.4. 11. 16.E.3.fines 4. 6.Eliz.Dyer 230. And here is the ſeuenth Caſe wherein the releaſe and Confirmation doth agree, for if there be Lord and Tenant by Fealty and twenty ſhillings rent, the Lord may releaſe all his right in the Seigniorie or in the Tenancie, ſauing Fealty & ten ſhillings rent, but he cannot ſaue a new kind of ſeruice for he may alwell abridge his ſeruices vpon a Releaſe as vpon a Confirmation. And as there is required priuitie when the Lord abridgeth the ſeruices of his Tenant by his Confirmation: ſo muſt there be alſo, when the Lord by his Releaſe abridgeth the ſeruices of his Tenant. And therefore the Lord Paramount cannot releaſe to the Tenant perauaile ſauing to him part of his ſeruices, but the ſauing in that caſe is void.

¶ *Et rendra rien a ſon Seignior forſque ceo que eſt compriſe, &c.* Which words are thus to be vnderſtood, that the Tenant ſhall not render any more Rent or annuall Seruice to the Lord than is contained in the Deed but other things, notwithſtanding the ſaid confirmation, the Tenant ſhall yeeld to the Lord, as releefe, ayde pur file marier, and ayde pur faire fitz Chiualer, becauſe theſe are incidents to the tenure that remaine, & ſhall not be diſcharged without ſpeciall words, by the generall words, of all other Actions, Seruices and Demands. And ſo if a man hold of me by Knights Seruice, Rent, Suit, &c. and I releaſe to him all my right in the Seigniorie, excepting the Tenure by Knights Seruice, or confirme his eſtate to hold of me by Knights Seruice onely for all manner of Seruices, Exactions, and Demands: Yet ſhall the Lord haue Ward Marriage, Releefe, Ayde pur file marier, & pur faire fitz Chiualer, for theſe be incidents to the tenure that remaine. But it is holden, that if a man make a gift in taile by deed reſeruing two ſhillings rent a luy & ſes heires pro omnibus & omnimodis ſeruitiis, exactionibus ſecularibus & cunctis demandis, if the Donee die his heire of full age, the Donor ſhall haue no releefe, becauſe in the originall Deed of the gift in taile it is expreſſly limited, that by the Seruice of two ſhillings Rent he ſhall be quite of all Demands, (and Releefe lieth in Demand) and by reaſon of thoſe words, ſay they, there cannot any Releefe become due; but ſome doe hold the contrary in that caſe.

Britton f.57.177.40.E.3. 21.47,48. 18.E.3.26. 50.Aſſ.6.14.H.4.8.

13.R.2.tit.auowrie 89. Nota dictum. Fitzh.

Sect.539.

¶ MEs ſi le Seignior voile per fait de confirmation, que le tenant en ceſt cas doit render

BVt if the Lord will by his Deed of Confirmation that the Tenant in this caſe ſhall yeeld

render a luy vn eſperuer, ou vn roſe annualment a tiel feaſt, &c. ceſt confirmatiou eſt voide, pur ceo que il reſerua a luy vn nouel chole que ne fuit parcel de ſes ſeruices deuant la confirmation, et iſſint le ſeignior poit bien per tiel confirmation abridger les ſeruices, per queux le tenant tient de luy, mes il ne poit reſeruer a luy nouel ſeruices.

to him a Hawke or a Roſe yearly at ſuch a feaſt, &c. this confirmation is void, becauſe hee reſerueth to him a new thing which was not parcell of his ſeruices before the confirmation: And ſo the Lord may well by ſuch confirmation abridge the ſeruices by which the tenant holdeth of him, but hee cannot reſerue to him new ſeruices.

¶ This vpon that which hath beene ſaid before in the next preceding Section is euident and needeth no further explication.

Sect. 540.

¶ Item, ſi ſoit ſeignior, meſne, et tenant, et le tenant eſt vn Abbe, que tient de meſne per certain ſeruices annualment, le quel nad aſcun cauſe dauer acquitãce enuers ſon meſne, pur porter briefe de Meſne, &c. en ceſt cas, ſi le meſne confirma leſtate q̃ labbe ad en la terre, a auer et tener la terre a luy et a ſes ſucceſſors en frankalmoigne, &c. en ceſt cas le confirmation eſt bone, et adonques labbe tiendra de le meſne en frankalmoigne. Et la cauſe eſt pur ceo que nul nouel ſeruice eſt reſerue, car touts les ſeruices eſpecialment ſpecifies ſont extincts, et nul rent eſt reſerue al meſne forſque que labbe tient de luy la terre, et ceo fiſt il deuant la confirmation, car celuy que tient en frankalmoigne, ne doit faire aſcun corporall ſeruice, iſſint que per tiel confirmation il appiert, que le meſne ne reſerua a luy aſcun nouel ſeruice, mes que les tenements ſerront tenus de luy come ceo fuit deuant. Et en ceſt caſe

ALſo, if there be Lord, Meſne, and tenant, & the tenant is an Abbot that holdeth of the meſne by certaine ſeruices yearly, the which hath no cauſe to haue acquitance againſt his meſne for to bring a writ of Meſne, &c. in this caſe if the meſne confirme the eſtate that the Abbot hath in the land, to haue and to hold the land vnto him & his ſucceſſors in frankalmoigne, or free almes, &c. in this caſe this confirmation is good, and then the Abbot holdeth of the meſne in frankalmoigne: and the cauſe is for that no new ſeruice is reſerued, for all the ſeruices ſpecially ſpecified bee extinct, and no rent is reſerued to the meſne, but the Abbot ſhall hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to doe no bodily ſeruice, ſo that by ſuch confirmation it appeareth the meſne ſhal not reſerue vnto him any new ſeruice, but that the lands ſhall be holden of him as it was before, and in this

caſe labbe auera vn briefe de meſne, ſil ſoit diſtreiñ en ſon default per force d̄ le dit confirmation, lou per caſe il ne puiſſoit auer vn briefe adeuant, &c.

caſe the Abbot ſhal haue a writ of Meſne if hee bee diſtrained in his default, by force of the ſaid confirmation, where percaſe hee might not haue ſuch a writ before.

4.E 3.19. 22.E.3. 15.b. the Lord Wakes caſe. 10.E.3.5. 15.E.3.Confirmat.8. 4.E.3.19.20. F.N.B.136.h & q. 4.E.4.35.31.E.1. Meſne 55. 11.E 3.Auowrie 100. 22.E.3.18.b. 30.E.3 13. 16.H.3.Auowr.e 243.

¶ HEre our Author hauing ſeene the former Bookes putteth his caſe, that the meſne maketh the Confirmation to hold in Frankalmoigne, and not the Lord paramount.

¶ *Et en ceſt caſe labbe auera briefe de meſne.* Here is to bee noted, that vpon a Confirmation to hold in Frée almoigne there lieth a Writt of Meſne, albeit the cauſe of acquitall beginne after the Seigniory And ſo vpon ſuch a Confirmation the Tenant ſhall haue, Contra formam feoffamenti.

Sect.541.

45.E.3.10. 30.H.6. tit.barre 59.Regiſtrum 102. 1.H.6.cap.5.

¶ HEre is to be obſerued a diuerſity betweene the cuſtodie of the body of a Ward within age, and a right of inheritance in the body of a villeine in groſſe, for a man may be put out of poſſeſſion of the cuſtodie of his Ward, but not of his villeine in groſſe, no more thã a man can bée of his priſoner which he hath taken in war.

Brooke.tit.propertie 28.

Alſo of things that are in grant, as Rents, Commons, and the like, it is at the election of the party whether hée will be diſſeiſed of them or no, as ſhall bée ſaid after in his proper place. But of a villeine in groſſe he cannot at all be diſſeiſed. (a) Non valet confirmatio niſi ille qui confirmat ſit in poſſeſſione rei vel iuris vnde fieri debet confirmatio, & eodem modo niſi ille cui confirmatio fit, ſit in poſſeſſione.

(a) Bracton lib.2.59.b. 24.E.3.tit.diſcont.16. 42 E.3.18.40.E.3.17. 43.E.3.4.9 E.4.38. Dyer.10.Eliz.Growches caſe.

And materially doth Littleton put his caſe of a Villeine in groſſe, for of a villeine regardant to a Mannor, the Lord may be put out of poſſeſſion, for by putting him out of poſſeſſion of the Mannor which is the principall, hée may likewiſe bée put out of poſſeſſion of the villeine regardant which is but accellory. And by the recouery of the Manor the villeine is recouered. But if another doth take away my villeine in groſſe or regardant, he gaineth no poſſeſſion of him. And this doth well appeare by the Writ of Nativo habendo, for that Writ is not brought againſt any perſon incertaine (becauſe no man can

¶ ITem ſi ieo ſue ſeiſie dũ villein come de villein en gros, et vn auter luy prent hors de ma poſſeſſion, enclaimãt luy deſtre ſon villeine la ou il nauoit aſcun droit dauer luy come ſon villeine, et puis ieo confirma a luy leſtate que il ad en mon villeine, ceſt confirmation ſemble void, pur ceo que nul poit auer poſſeſſion de vn home come de villeiñ en groſſe, ſi non celuy que ad droit de luy auer come ſon villein en groſſe. Et iſſint entant que celuy a que le confirmation fuit fait, ne fuit ſeiſie de luy come de ſon villeine a le temps de confirmation fait, tiel confirmation eſt void.

ALſo if I bee ſeiſed of a villeine as of a villein in groſſe, and another taketh him out of my poſſeſſion, clayming him to bee his villein there whet hee hath no right to haue him as his villeine, and after I confirm to him the eſtate which hee hath in my villeine, this confirmation ſeemeth to be voide, for that none may haue poſſeſſiõ of a man as of a villeine in groſſe, but hee which hath right to haue him as his villeine in groſſe. And ſo inaſmuch as he to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of the cõfirmatiõ made, ſuch confirmation is void.

can gaine the possession of him. But the Writ is to this effect; Rex vic' Salutem, præcipimus tibi quod iuste & sine dilatione habere facias A. B. natiuum & fugitiuum suum, &c. vbicunque inuentus fuerit, &c. & prohibemus super forisfacturam nostram ne quis eum iniuste detineat, so as detaine him one may, but to possesse himselfe of him, and to dispossesse the Lord he cannot.

And if a man might haue beene dispossessed of a Villeine in grosse, or of a Villeine regardant (vnlesse he be dispossessed of the Mannor also, as hath beene said) the Law would haue giuen a remedie against the wrong doer, as the Law doth in the case of a Ward.

Now seeing it doth appeare by our bookes (a) and by Littleton himselfe by implication (speaking only of a villeine in grosse) that if a man be disseised of the Mannor whereunto the Villeine is regardant, he is out of possession of his villeine, and so an Aduowson appendant, and the like. Hereby (Littleton putting his case of a villeine in grosse) and by diuerse Authorities a point controuerted in our bookes (*) is resolued, viz. that by the grant of the Mannor without saying Cum pertinentiis, the Villeine Regardant, Aduowson appendant, and the like doe passe, for if the Disseisor shall gaine them as incidents to the Mannor, whose estate is wrongfull, A multo fortiori the Feoffee, who commeth to his estate by lawfull conueyance, shall haue them as incidents. But where the entrie of the Disseisee is lawfull, he may seise the villeine regardant, or present to the Aduowson, &c. before he enter into the Mannor, or otherwise vse where his entrie is not lawfull, and so are the antient Authors (b) to be intended.

(a) Bracton, fol. 243. Britton, fol. 126.

(*) 9.E.4.38. 3.H.4 15. 18 E.3.44. 16.E.3. Quar. Imp. 140. 19.R.2. Tresp. 255. 19.H 6.33. 21.H.6.9. 33.H.6.33. 5.H.7 36.38 10.H 7.9.F.N.B.33 q. 22.H.6.13. per Moyle. 30.E.3.31. 39.E.3.21. 43.E.3.12.

(b) Bracton, fol. 242, 243. Britton, fol. 126. Flet. &c.

Sect. 542.

MEs è cest cas, si tiels parols fueront en le fait, &c. Sciatis me dedisse & concessisse tali, &c. talem villanum meum, **cest bone, mes ceo vera per force et voy de grant et nemy per voy de confirmation, &c.**

BUt in this case if these words were in the deed, &c. *Sciatis me dedisse & concessisse tali, &c. talem villanũ meum*, this is good, but this shall enure by force and way of grant, and not by way of confirmation, &c.

CHere it is to bee obserued, that a man hath an inheritance in a villeine, whereof the wife of the Lord shall be endowed as hath beene said, for in him a man may haue an estate in fee or fee taile for life or yeares. And therefore Littleton is here to bee vnderstood, that in the Grant there were these words (his heires) or else nothing passed but for life, as of other things that lie in Grant.

2.H.6.F.N.B.77.2.b.

24.E.3.Discont.16.

Sect. 543.

CEt aſcun foits ceux verbs Dedi & conceſſi, **vſeront per voy dextinguiſhment del choſe done ou grant, ſicome vn tenant tient de ſon ſeignior per certeine rent, et le ſeignior grãta per ſon fait a le tenant et a ſes heires le rent, &c. ceo vſera a le teñ per voy dextinguiſhment, car per cel grant le rent eſt extinct, &c.**

ANd ſometimes theſe verbes *Dedi & conceſſi*, ſhall enure by way of extinguiſhment of the thing given or granted, as if a tenãt hold of his Lord by certaine rent, & the Lord grãt by his deed to the tenant and his heires the rent, &c. this ſhall enure to the tenant by way of extinguiſhment, for by this grant the rent is extinct, &c.

And this grant of the rent ſhall enure by way of releaſe.

3.E.3.12. & 3.Ass.7.

Sect. 544.

CEſmeſme le manner eſt lou vn ad vn rent chatge hoꝛs de certaine terre, et il graunta al tenant de la terre le Rent charge, &c. Et la cauſe eſt, pur ceo que appiert, per les parols del grant, que le volunt le donoꝛ eſt, que le tenant auera le rent, &c. et entant que il ne puit auer ne perceiuer aſcun rent hoꝛs de ſon terre demeſne, pur ceo le fait ſerra intendue et pꝛis pur l'pluis aduantage et auaile pur le tenaunt que puit eſte pꝛis, et ceo eſt per voy dextinguiſhment.

IN the ſame manner it is, where one hath a Rent-Charge out of certaine Land, and hee grant to the Tenant of the Land the Rent Charge, &c. And the reaſon is, for that it appeareth by the words of the Grant, That the will of the Donor is, That the Tenant ſhall have the rent, &c. and inaſmuch as hee cannot have or perceive any rent out of his owne Land, therefore the Deed ſhall be intended & taken for the moſt advantage, and availe for the tenant, that it may be taken, and this is by way of extinguiſhment.

34.H.6.fol.41. CBut if the Grantée of the Rent-charge granteth it to the Tenant of the Land and a ſtranger, it ſhall be extinguiſhed but for the moitie: and ſo it is of a Seignioꝛie.

Sect. 545. 546.

CItem ſi ieo leſſa Terre a vn home pur terme dans & puis ieo confirma ſon eſtate ſans pluis paroꝛs mitter en le fait, per cel il nad pluis greinder eſtate que pur terme dans, ſicome il auoit deuant.

ALſo if I let Land to a man for terme of yeares, and after I cõfirme his eſtate, without putting more words in the Deed, by this he hath no greater eſtate than for terme of yeares, as hee had before.

Sect. 546.

CMes ſi ieo releſſa a luy mon dꝛoit que ieo aye en le terre ſans plus parols mitter en le fait, il ad eſtate de franktenement. Iſſint poyes entend mon fits diuers grands diuerſities perenter Releaſes & Confirmations.

BVt if I Releaſe to him all my right which I have in the Land, without putting more words in the Deed, he hath an eſtate of freehold. So thou maiſt underſtand (my ſonne) divers great diverſities betweene Releaſes and Confirmations.

In theſe two Sections is the ſeuenth caſe wherin a Releaſe and Confirmation doe differ.

Sect.

Sect. 547.

¶ Item, ſi ieo eſteant deins age leſſa terre a un auꝰ pur terme de xx. ans, et puis il graunte le terre a vn auter p̄ tme de x. ans, iſſint il granta forſque parcel de ſon terme, en ceſt caſe quant ieo ſue de pleine age, ſi ieo releſſa al Grantee de mon leſſee, &c. ceſt releaſe eſt voyd, pur ceo que il ny ad aſcun p̄iuitie perenter luy et moy, &c. Mes ſi ieo confirme ſon eſtate, donque ceſt confirmation eſt bone. Mes ſi mon Leſſee graunta tout ſon eſtaꝰ a vn auꝰ, donq̄s mō releaſe fait a l' grātee ē bone et effectual.

LIkewiſe if I being within age, let land to another for terme of xx. yeares and after he granteth the land to another for term of x. years ſo hee granteth but parcell of his terme: In this caſe when I am of full age, if I releaſe to the Grantee of my Leſſee, &c. this Releaſe is void, becauſe there is no privitie betweene him and me, &c. but if I confirme his eſtate, then this confirmation is good. But if my leſſee grant all his eſtate to another, then my Releaſe made to the Grantee is good and effectuall.

¶ HEre are two things to be obſerued: Firſt, That the Leaſe of an Enfant in this caſe is not void but voidable. Secondly, this is the eighth caſe put by Littleton, wherein the Releaſe and Confirmation doe differ. 7.E.4.6.b. 18.E.4.2. 9.H.7.24.

Sect. 548.

¶ Item, ſi home granta vn rēt charge iſſuant hors de ſon terre a vn auter pur terme de ſon vie, et puis il confirma ſon eſtate en le dit rent, a auer et tener a luy en fee taile ou en fee ſimple, ceſt Confirmation eſt voyd, quant a enlarger ſon eſtate, pur ceo que celuy que confirme nauoit aſcun reuerſion en le rent.

ALſo if a man grant a Rent-charge iſſuing out of his Land to another for terme of his life, and after hee confirmeth his eſtate in the ſaid rent; To have and to hold to him in fee taile or in fee ſimple, this Confirmation is void as to inlarge his eſtate, becauſe hee that confirmeth hath not any reverſion in the Rent.

¶ HEre the Diuerſitie is apparant, betweene a Rent newly create, and a rent in eſſe: which needeth no explication. Onely this is to be obſerued, That Littleton intendeth his Deed of Confirmation not to containe any clauſe of Diſtreſſe, for otherwiſe, as to the Confirmation the Deed is void, but the clauſe of Diſtreſſe doth amount to a new grant, as in the Chapter of Rents hath beene ſaid. 21.E.3.47. 15.E.4.1.b. Pl.Com.35.b. H.4.19.

Sect. 549.

¶ MEs ſi home ſoit ſeiſie en fee de Rent ſeruice ou de rent

BVt if a man be ſeiſed in fee of a Rent Service, or Rent Charge,

rent charge, et il grant le rent a vn auter pur terme de vie, et le tenant atturna, et puis il confirma lestate de le grantee en fee taile, ou en fee simple, cest confirmation est bone, quant a enlarger son estate, solonqz les parols le confirmation, pur ceo que celuy q̄ confirmast al tēps de confirmation, auoit vn reuersion del rent.

& he grant the rent to another for life, and the tenant attorneth, and after hee confirmeth the estate of the grantee in fee taile, or in fee simple, this confirmation is good, as to enlarge his estate according to the words of the confirmation, for that he which confirmed at the time of confirmation had a reversion of the rent.

¶ HEre is the eight case wherein the Release and Confirmation doth agrée, and it is here to be obserued, that to the grant of the estate for life Littleton doth put an attornement, because it is requisite, but to the Confirmation to the Grantee of the rent to enlarge his estate, there is none necessary, and therefore he putteth none: but of this more shall be said in the Chapter of Attornement, Sect.556.557.

Sect. 550.

¶ Mes en cas auantdit lou home graunt vn rent charge a vn auter pur terme de vie, sil voile q̄ le grauntee aueroit estate en le taile, ou en fee, il conuient que le fait de grant del rent charge pur terme de vie, soit surrender ou cancell, & donques de faire vn nouel fait dautiel rent charge. A auer & perceiuer a le grantee en le taile, ou en fee, &c. Ex paucis plurima concipit ingenium.

BVt in the case aforesaid where a man grant a rent charge to another for terme of life, if hee will that the Grantee should have an estate in taile, or in fee, it behoveth that the deed of grant of the rent charge for terme of life be surrendred or cancelled, & then to make a new deed of the like rent charge: To have & perceive to the Grantee in taile or in fee, &c. *Ex paucis plurima concipit ingenium.*

Vide Sect.636.

Surrender ou cancell. Note by cancellation of the Déed the rent which lieth onely in grant ceaseth (as here it appeareth) as well as by the Surrender. And the reason wherefore (if the Grantor make a new grant of the rent, and not enlarge it by way of Confirmatiō, as Littleton must be intended) the deed should be surrendred or cancelled, is lest the Grantor should be doubly charged viz. with the old grant for life, and with the new grant in fee, or as hath béene said, the Grantor may grant to the Grantée for life and his heires, that he and his heires shall destreine for the rent, &c. and this shall amount to a new grant, and yet amount to no double charge, whereof you may sée before in the Chapter of Rents.

CAP. 10. Of Attornement. Sect.551.

ATtornement eſt come ſi ſoit ſeñr a tenant a le Señr voile granter p ſon fait les ſeruices ǒ ẽ t a vn auẽ pur terme dans, ou pur terme de vie, ou en taile, ou en fee, il couient que le tenant atturna al grauntee en le vie le grantor, p force et vertue del grant, ou autrement le grant eſt void. Et atturnement eſt nul auter en effect forſq̃ quant le t ad oye del grant fait p ẽ Señr, q̃meſme le tenant agreea per parol a le dit grant, ſicome adire a le grauntee, ieo moy agree a le grant fait a vous, &c. ou ieo ſeu bien content de le graunt fait a vous, mes le pluis common atturnemẽt eſt, adire, Sir, ieo atturna a vous per force del dit graunt, ou ieo deueigne vẽ tenant, &c. ou liuer al grantee vn denier, ou vn maile, ou vn farthing per voy dattornement.

ATtornemẽt is, as if there bee Lord and tenant, and the Lord will grant by his Deed the ſervices of his Tenant to another for terme of yeares, or for terme of life, or in taile, or in fee, the tenant muſt attorne to the Grantee in the life of the Grantor by force and vertue of the grant, or otherwiſe the grant is void. And Attornement is no other in effect, but when the Tenant hath heard of the grant made by his Lord, that the ſame tenant do agree by word to the ſaid grant, as to ſay to the grantee, I agree to the Grant made to you, &c. or I am well content with the grant made to you, but the moſt common Attornement is, to ſay, Sir, I attorne to you by force of the ſaid Grant, or I become your Tenant, &c. or to deliver to the Grantee a pennie, or a halfe pennie, or a farthing by way of Attornement.

ATtornemẽt is an agreement of the Tenant to the grant of the Seigniorie, or of a rent, or of the Donee in taile or tenant for life or yeares to a grant of a Reuerſion or Remainder made to another. It is an ancient word of art, and in the Common Law ſignifieth a toring or attoring from one to another, wee vſe alſo Attornamentum as a Latine word, and Attornare to attorne. And ſo Bracton (a) vſeth it, Item videndum eſt ſi Dominus attornare poſſit alicui homagium & ſeruitium tenentis ſui contra voluntatem ipſius tenentis, & videtur quod non.

Bracton lib.2.fol.81. Brit.f.105.b.176.& 178. Fleta, lib.3.cap.6.

(a) Bracton, lib.2.fo.81.b Fleta, Britton vbi ſupra.

And the reaſon why an Attornement is requiſite, is yeelded in old Bookes to be, Si Dominus attornare poſſit ſeruitium tenentis contra voluntatem tenentis, tale ſequeretur inconueniens, quod poſſit eum ſubiugare capitali inimico ſuo, & per quod teneretur Sacramentum fidelitatis facere ei qui eum damnificare intenderet.

Bracton, lib.2.fol.81.b. Britton, vbi ſupra.

¶ *Il couient que le tenant attorna al grantee en la vie del grãtor, &c.* And ſo muſt he alſo in the life of the Grantee, and this is vnderſtood of a grant by Deed. And the reaſon hereof is, for that euery grant muſt take effect as to the ſubſtance thereof in the life both of the grantor and the Grantee. And in this caſe if the Grantor dieth before attornemẽt, the Seigniorie, Rent, Reuerſion, or Remainder deſcend to his heire, and therefore after his deceaſe the Attornement commeth too late, ſo likewiſe if the Grantee dieth before Attornement, an Attornement to the

Vide Lit.fol.128. 11.H.7.19.

Lib.1 fo.104 105. Shelleyes caſe.

40 Aſſ.19.34 H.6.7. 20 H.6.7.

2 R 36. 1 R 104

the heire is void, for nothing descended to him, and if he should take, he should take it as a Purchasor, where the heires were added but as words of limitation of the estate, and not to take as Purchasors.

34.H.6.7. 20.H.6.7.

But if the grant were by fine, then albeit the Conusor or Conusee dieth, yet the grant is good. For by fine leuied the state doth passe to the Conusee & his heires, and the Attornement Bracton, lib 2.fol. 81.82. sec. to the Conusee or his heires at any time to make priuitie to distraine is sufficient. But all this Lib.6.fol 68.Sir Moyles Finches case. is to be taken as Littleton vnderstood it, viz of such grants as haue their operation by the common Law. For since Littleton wrote if a fine be leuied of a Seigniorie, &c. to another to the vse of a third person and his heires, he & his heires shall distraine without any Attornement, because he is in by the Statute of 27.H.8.cap.10. by transferring of the state to the vse, and so he is in by act in Law.

2 R. 36. pl. 321 b. 3 Leo 285 Mo 273. By. 30 a.

27.H.8.cap.16. Vide Sect.584.

And so it is and for the same cause, if a man at this day by Deed indented & inrolled, according to the Statute, bargaineth and selleth a Seigniorie, &c. to another, the Seigniorie shall passe to him without any Attornement, and so it is of a Rent, a Reuersion, and a Remainder. So as the Law is much changed, & the ancient priuiledge of Tenants, Donees, and Lessees much altered concerning Attornement since Littleton wrote.

pl. 321 b. 5. R. 113

But if the Conusee of a fine before any Attornment by Deed indented and inrolled, bargaineth & selleth the Seigniorie to another, the bargainee shall not distraine because the bargainor could not distraine. Et sic de similibus, for nemo potest plus iuris ad alium transferre quàm ipse habet. Vide Sect.149. where vpon a recouery, the Recoueror shall distraine and auow without Attornement.

Lib.6.vbi supra. Vide Sect.149.

49.E.3.4. 34.H.6.8. 6.E.4.13. pl. 304 b

A grant to the King or by the King to another, is good without Attornemynt, by his Prerogatiue.

¶ *Attornement est nul auter en effect, &c.* It is to be vnderstood that there be two kinde of Attornements, viz. an Attornement in deed or expresse, & an Attornement in Law or implicite. Of Attornement expresse or in deed Littleton speaketh here, and of Attornment in Law he speaketh after in this Chapter. And to both these kinds of Attornements there is an incident inseparable, that is, that the tenant hath notice of the grant for (an attornment being an agreement or consent to the grant, &c.) he cannot agree or consent to that which he knoweth not. And the vsuall pleading is, to which grant the Tenant attorned. And therefore if a Bayly of a Mannor who vsed to receiue the rents of the Tenants, purchase the Mannor, and the Tenants hauing no notice of the purchase, continue the payment of the Rents to him, this is no Attornement. So if the Lord leuie a fine of the Seigniorie, & by fine take backe an estate in fee, the tenant continueth the payment of the rent to the first Conusor without notice of the fines, this is no Attornement. But it is to be knowne, that there be two kinde of notices, viz. a notice in deed or expresse, whereof Littleton here speaketh when he saith, that the Tenant agreeth to the grant, and a notice in Law or implied, whereof Littleton hereafter speaketh in this Chapter.

Lib.2.fol.67.b.Tookers case. 13.Eliz.Dier 302. Tookers case vbi supra.

Lib.2.Tookers case vbi supra.

¶ *De grant fait per son Seignior.* Here is to be seene when the thing granted is altered, what becommeth of the Attornement.

If there be Lord Mesne and Tenant, and the Mesne grant ouer his Mesnaltie by Deed, the Lord releaseth to the Tenant, whereby the Mesnaltie is extinct and there is a rent by surplusage, an Attornement to the grant of this rent seeke is good, although the qualitie of that part of the rent is altered. because it is altered by act in Law.

pl. 305 [illegible] r. 152 b

If a reuersion of two Acres be granted by Deed, and the Lessor before Attornement leuie a fine of one of them, and the Tenant attorne to the Grantee by Deed, this is good for the other Acre.

(a) 18.E.3.tit.variance 63 22.E.3.18. Tookers case vbi supra.

(a) If the Reuersion be granted of three Acres, and the lessee agree to the said grant for one Acre, this is good for all three, and so it is of an Attornement in Law if the reuersion of three Acres be granted, and the Lessee surrender one of the Acres to the Grantee, this Attornement shall be good for the whole reuersion of the three Acres according to the Grant.

¶ *Et le tenant agrea.* Hereafter in this Chapter Littleton doth teach what manner of Tenant shall attorne.

¶ *Agrea per parol, &c.* And so hee may, and more safely by his Deed in writing.

39.H.6.3.Tookers case vbi supra.

¶ *Sicome adire a le grantee, &c.* Here is to be seene to what manner of Grantees the attornement is good. Regularly the attornement must be according to the grant either expressly, or impliedly. Of the first Littleton hath here spoken,

Imo

Impliedly, as if a reuerſion be granted to two by Deed, and the Leſſee attorne to one of them according to the grant, this Attornement is good, but not to veſt the reuerſion only in him to whom attornement is made, but it ſhall enure to both the Grantees, for that is according to the grant, and for that it cannot veſt the reuerſion onely in him to whom the Attornement is made. And ſo it is if one Grantee dieth, the Attornement to the Suruiuor, is good.

Tookes caſe vbi ſupra. 11.H.7.12.

If the Lord grant by Deed his Seigniorie to A. for life, the remainder to B. in fee, A. dieth and then the Tenant attorne to B. this Attornement is void, becauſe it is not according to the grant, for then B. ſhould haue a remainder without any particular eſtate.

20.H.6.7.

If a reuerſion be granted to a man and a woman, they are to haue moities in law, but if they entermarrie & then Attornement is had, they ſhall haue no moities, (and yet by the purport of the grant they are to haue moieties) becauſe it is by act in Law.

Tookers caſe vbi ſupra. Pl.Com.187.483. 187.b.

If a Feme grant a reuerſion to a man in fee, & marry with the Grantee, the Leſſee Attorne to the husband, this is a good Attornement in Law to the husband.

2.R.2.tit.Attornement 8. Lib.4.f.61.Hemlings caſe

If a reuerſion be granted by Deed to the vſe of I.S. and the Leſſee hearing the Deed read, or hauing notice of the contents thereof attorne to Ceſty que vſe, this is an implied Attornement to the Grantee.

If a reuerſion be granted for life, the remainder in taile, the remainder in fee, the Attornement to the Grantee for life ſhall enure to them in the remainder to veſt the remainder in them.

Temps E.1.Attorn.22. 18.E.4.7.

And in thoſe caſes if the Tenant ſhould ſay, that I doe attorne to the Grantee for life, but that it ſhall not beneſit any of them in remainder after his death, yet the Attornement is good to them all, for hauing attorned to the Tenant for life, the Law (which he cannot controll) doth veſt all the remainder. And of this more ſhall be ſaid hereafter in this Chapter.

Littleton here putteth fiue examples of an expreſſe Attornement, but of them the laſt is the beſt, becauſe the care is not only a witneſſe of the words, but the eye of the deliuery of the penny, &c. and ſo there is dictum & factum. And any other words which import an agreement or aſſent to the grant, doe amount to an Attornement. And albeit theſe fiue expreſſe Attornements be all ſet downe by Littleton, to be made to the perſon of the Grantee, (b) yet an Attornement in the abſence of the Grantee is ſufficient, for if he doth agree to the grant either in his preſence or in his abſence, it is ſufficient.

(b) Lib.2.fol.68.69. Tookers caſe. 28.H.8.tit.Attornement Br.40.

Sect.552.

¶ Item, ſi le Seignior graunt l'ſeruice de ſon tenant a vn home, & puis per vn fait portant vn darreine date, il granta meſmes les ſeruices a vn auter, & l'tenãt attorne a le ſecond grantee, ore le dit grauntee ad les ſeruices, & cõt que apres le Tenant voile attorner a le primer grantee, ceſt clerement void, &c.

ALſo if the Lord grant the ſeruice of his Tenãt to one man, and after by his Deed bearing a later date he grant the ſame ſeruices to another, & the Tenant attorne to the ſecond Grantee, now the ſaid Grantee hath the ſeruices, & albeit afterwards the Tenant will attorne to the firſt Grantee, this is clearely void, &c.

¶ HEre it is to bee obſerued, that Litt. expreſſeth not what eſtate is granted, and very materially, for if the former grant were in fee, and the latter grant were for life, and the tenant doth firſt attorne to the ſecond Grantee, hee cannot after attorne to the firſt Grantee to make the fee ſimple paſſe, for that ſhould not bee according to the grant, but in that caſe the Attornement to the firſt is countermanded. And ſo it is if a Reuerſion expectant vpon an eſtate for life bee granted to another in fee, and after the Grantor before Attornement confirme the eſtate of the Leſſee in taile, the Attornement to the Grantee for the fee ſimple is void.

In the ſame manner, if a Reuerſion vpon an eſtate for yeares be granted in fee, and the Leſſor confirme the eſtate of the Leſſee for life, he cannot afterward attorne.

11.H.7.19.2 R.2.vbi supra.
P.3.Eliz.Bendloes.
Hemings case vpi supra.

If a Feme sole maketh a Lease for life or yeares reseruing a rent, and granteth the Reuersion in fee, and taketh husband, this is a Countermand of the Attornement.

Where our Author putteth his case of the whole reuersion, if two Coparceners bee of a reuersion, and one of them granteth the moity by Fine, the Conusee shall haue a Quid iuris clamat for the moitie.

11.H.7.12.

If in the case that our Author here putteth of seuerall grantees, if the Tenant Attorne to both of them, the Attornement is void, because it is not according to the Grant. If a reuersion be granted for life, and after it is granted to the same Grantee for yeares, and the Lesse attorneth to both Grants, it is void for the incertaintie: A multo fortiori, if the Lord by one Deed grant his Seigniorie to I. Bishop of London and to his heires, and by another Deed to I. Bishop of London, and to his Successors, and the Tenant attorne to both grants, the Attornement is void, for albeit the Grantee be but one, yet he hath seuerall capacities, and the grants are seuerall, and the attornement is not according to either of the Grants.

But if A. grant the reuersion of Blacke acre or White acre, and the Lessee attorne to the Grant, & after the Grantee maketh his election, this Attornement is good, for albeit the state was incertaine, yet he attorned to the Grant in such sort, as it was made, and so note a diuersity betweene one grant and seuerall grants, and obserue in this case an Attornement good in expectation, and yet nothing passed at the time of the Attornement but by the election subsequent.

Sect.553.

Temps E.2.Attornement.
48.E.3.15.

HEre it is to bee obserued that when a man maketh a feoffment of a Mannor, the seruices doe not passe but remaine in the Feoffor vntill the Freeholders doe attorne, and when they doe attorne the attornement shal haue relation to some purpose and not to other. For albeit the Attornement bee made many yeares after the feoffment, yet it shall haue relation to make it passe out of the Feoffor Ab initio euen by the Liuerie vpon the feoffment, but not to charge the tenants with any meane arrerages or for waste in the meane time, or the like.

If a reuersion of Land be granted to an alien by Deed, and before Attornement the Alien is made Denizen, and then the attornement is made, the King vpon office found shall haue the land: for as to the estate betweene the parties it passeth by the Deed Ab initio.

Pasch.5.E.3.Coram Rege. Sussex in Thesaur.
21.E.3.47.
34.E.3.Double plea.24.
42.Ass.p.6. 43.Ass.p.20.
30.E.3. 9.E.3.
26.E.3.Per quæ seruicia 21.
8.H.4.1.b.12.H.4.
20.H.6.7.35.H.6.
9.E.4.32. 13.H.7.14.a.
1.H.7.31.
4.E 6.Attornement, Br.30.

If a man plead a feoffment of a Mannor he need not plead an Attornement of the Tenants, but (if it be materiall) it must be denied or pleaded of the other side.

And vpon consideration had of all the bookes touching this point, whether the seruices of the Freeholders doe passe, wherein there haue been three seuerall opinions, viz. some haue holden that the seruices doe passe in the right by the Liuery as parcell of the Mannor: but not to auow without Attornement as in the case of the Fine. And others haue holden, that they both passe in right and in possession to distreine without Attornement. And the third opinion is, that in this case the said seruices passe neither in possession nor in right, but vntill Attornement remaine

CItem, si hom soit seisie de vn mannor, quel mannor est parcel en demesne, et parcel en seruice, sil voile aliener cel mannor a vn auter, il couient que per force del alienation, que touts les tenants que teignont del alienor, come de son mannor, attornerent al alienee, ou autrement les seruices demurront continualment en lalienor, forpris tenants a volunt, car il ne besoigne que tenants a volunt attornent sur tiel alienation, &c.

ALso if a man bee seised of a mannor, which mannor is parcell in demesne, and parcell in service, if hee will alien this mannor to another, it behooveth that by force of the alienation, all the tenants which hold of the alienor as of his mannor doe attorne to the alienee, or otherwise the services remaine continually in the alienor, saving the tenants at will, for it needeth not that tenants at will doe attorne upon such alienation, &c.

remaine continually in the Alienor as Littleton here holdeth. And so it was resolued Pasch. 15. Eliz. betweene Brasbitch and Barwell according to the opinion of our Author. And I neuer yet knew any of Littletons cases (albeit I haue knowne many of them) to be brought in question, but in the end the Iudges concurred with our Author.

Vid. Hill 14 Eliz. Rot 508. in Communi banco.

And where our Author speaketh of the Attornement of the Freeholders, if the Lord make a Lease for yeares or for life of a Mannor, and the Freeholders attorne to the Lessee, if after the reuersion of the Mannor be granted, the Attornement of the Lessee for yeares or life shall binde the Freeholders, for by their former Attornement, they haue put the Attornement into the mouth of the Lessee.

9. E. 2. tit. Attornement 18. b
19. E. 2. Ibid. 19.
21 E. 3. 47. 5. H. 5 12 b. Vid. Lit. Sect. 594. & 551.

¶ *Forsprise tenant a volunt, &c.* Here is implied Tenant at will or bycopie of Court Roll according to the custome of Manor, so as the Freehold and inheritance both of lands in the hands of Tenant at will by the Common Law, or by Custome shal passe both in right and in possession without any Attornement.

Sect. 554.

¶ Item, si soient sūr et tenant, et le tenant lessa la terre a vn auter pur terme de vie, ou dona la terre en le taile sauant le reuersion a luy, &c. si le Seignior en tiel cas granta son seigniory a vn auter, il couient que celuy en le reuersion atturna al grauntee, et nemy le tenant a terme de vie, ou le tenant en le taile, pur ceo que en cest cas celuy en le reuersion est tenant al Seignior, & nemy le tenant a terme de vie ne le tenant en le taile.

ALso if there bee Lord & Tenant, & the tenant letteth the lād to another for term of life, or giveth the land in taile saving the reversion to himselfe, &c. if the Lord in such case grant his Seigniory to another, it behoveth that hee in the reversion attorne to the grantee, and not the tenant for terme of life, or the Tenant in taile, because that in this case he in the reversion is tenant to the Lord, and not the tenant for terme of life, nor the tenant in taile.

¶ For it is a maxime in Law, that no man shall attorne to any grant of any Seigniorie, Rent seruice, Reuersion or Remainder, but hee that is immediately vnto the Grantor, and because in this case there is no vnitie betweene the Lord and the Tenant for life, or Donee in taile, but only betwen the Lord and him in the reuersion, for in this case the Attornement of him in the reuersion onely is good.

Max.

¶ *Sauant le reuersion a luy, &c.* That is to say, without limitation of any remainder ouer, and this is but to make his opinion plaine, as to the point that he putteth it.

Sect. 555.

¶ En mesme le maner est, lou sont Seigniour, mesne et tenant, si le Seigniour voile granter les seruices del mesne, coment que il ne fait ascun mention en son grant del mesne, vncore il couient que le mesne atturna, &c, et nemy le tenant pera-

¶ IN the same manner is it where there are lord, Mesne and Tenant, if the Lord will grant the services of the Mesne, albeit hee maketh no mention in his grant of the Mesne, yet the Mesne ought to attorne, &c. and not the Tenant peravaile, &c.

perauaile, &c. pur ceo q̃ le meſne eſt tenant a luy, &c.

for that the Meſne is Tenant unto him, &c.

This ſtanderh vpon the ſame reaſon that the next precedent caſe did.

Sect. 556.

THere is to bee obſerued a diuerſitie betweene a Rent ſeruice and a Rent charge, or a Rent ſecke, for as to the Rent ſeruice, no man (as hath beene ſaid) can attorne, but he that is priuie, ſo in caſe of a Rent charge it behoueth that the Tenant of the Freehold doth attorne to the Grantee, without reſpect of any priuitie. And therefore the Diſſeiſor onely in the caſe of a grant of a Rent charge, ſhall attorne, becauſe he is (as Littleton ſaith) tenant of the Freehold, but in caſe of a grant of a Rent ſeruice, the Attornement of the Diſſeiſee ſufficeth.

21.H.6.9.b.

If there be Lord and Tenant by homage, fealtie, and rent, the Tenant is diſſeiſed, the Lord granteth the rent to another, the Diſſeiſee attorneth, this is void: but if hee had granted ouer his whole Seigniorie, the Attornment had beene good, and the reaſon of this diuerſitie is here giuen by our Author, for that when the rent was granted onely, it paſſed as a Rent ſeck and conſequently the Diſſeiſor being Terre-Tenant, muſt attorne. But when the Seigniorie is granted, then the Diſſeiſee in reſpect of the priuitie may attorne.

MEs auterm̃ eſt, lou certaine terre eſt charge dun rent charge, ou Rent ſeck, car en tiel caſe ſi celuy que ad le rent charge ceo grant a vn auter, il couient q̃ le tenant del franktenement atturna al Grantee, pur ceo que le franktenement eſt charge oue le rent, &c. et enrent charge nul auowrie doit eſtre fait ſur alcun perſon pur le diſtreſſe priſe, &c. mes il auowera le priſe bone et droiturel, come en terres ou tenements iſſint charges a ſon diſtreſſe, &c.

BVt otherwiſe it is where certaine land is charged with a Rent-charge or Rent ſecke, for in ſuch caſe if hee which hath the rent-charge grant this to another, it behooveth that the Tenant of the freehold attorn to the Grantee, for that the freehold is charged with the rent, &c. And in a Rent-charge no Avowrie ought to be made upõ any perſõ for the diſtreſſe taken, &c. but hee ſhall avow the priſe to be good and rightfull, as in lands or tenements ſo charged with his diſtreſſe, &c.

Couient que le Tenant del Franktenement, &c. And therefore if the Tenant of the land charged with a Rent charge or a Rent ſecke, make a leaſe for life, and he that hath the Rent charge or rent ſecke granteth it ouer, the Tenant for life ſhall attorne, for he is Tenant of the Freehold, according to the expreſſe ſaying of our Author, and (as hath beene ſaid) there needeth no priuitie.

And it was holden by Dyer chiefe Juſtice of the Court of Common Pleas, and Mounſon Juſtice, in the argument of Bracebridges caſe aboueſaid, and not denied, that if he that hath a rent charge granteth it over for life, and the Tenant of the Land attorne thereunto, and after he granteth the reuerſion of the Rent charge, that the Grantee for life may attorne alone. And that theſe words of Littleton are to be vnderſtood when a rent charge or Rent ſecke is granted in poſſeſſion: And therewith agreeth 46 E.3. where it appeareth, That the Quid juris clamat in that caſe, did lie againſt the Grantee for life.

46.E.3.27. 2.H.6.9. Vi.Lit.Sect.549.& 553.

A man maketh a leaſe for life, and after grants to A. a Rent charge out of the reuerſion, A. granteth the rent ouer, he in the reuerſion muſt attorne, and not the Tenant of the freehold, for that the Freehold is not charged with the rent, for a Releaſe made to him by the Grantee doth not extinguiſh the rent. And Littleton is to be vnderſtood, that the Tenant of the Freehold

hold must atturne when the Freehold is charged.

¶ *Et en Rent charge nul Auowrie doit este fait sur aſcun perſon, &c.* This is the reaſon that Littleton giueth of the difference betweene the Rent ſeruice and the Rent charge. Now it may bee ſaid, That this reaſon is taken away by the Statute of 21.H.8. for by that Statute the Lord needs not auow for any rent or ſeruice vpon any perſon in certaine, and then by Littletons reaſon there needeth no priuitie to the attornement of a ſeigniorie, for (ſay they) Ceſſante cauſa vel ratione legis, ceſſat lex. As at the Common Law no aid was grantable of a ſtranger to an auowrie: becauſe the auowrie was made of a certaine perſon, but now the Auowrie being made by the ſaid Act of 21.H.8. vpon no perſon, therefore the reaſon of the Law being changed, the Law it ſelfe is alſo changed, and conſequently in an Auowrie, according to that Act, aid ſhall be grant of any man, and the like in many other caſes, which caſe is granted to be good Law: but albeit the Lord (as hath beene ſaid) may take benefit of the Statute, yet may he auow ſtill at his election vpon the perſon of his Tenant. Alſo albeit the maner of the Auowrie be altered, yet the priuitie (which is the true cauſe of the ſaid difference) remaineth ſtill as to an Attornement. 21 H.8.cap.19. Vide Sect.454. 27.H.8.4 b.

¶ *Rent charge, &c.* It is to be obſerued, to what kind of Inheritances being granted, an Attornement is requiſite. And in this Chapter Littleton ſpeaketh of fiue: Firſt, of a Seigniorie, Rent ſeruice, &c. Secondly, of a Rent charge. Thirdly, of a Rent ſecke. And hereafter in this Chapter of two more, viz. of a Reuerſion and remainder of Lands, for the Tenant ſhall neuer need to attorne but where there is Tenure, attendance, remainder, or payment of a Rent out of land. And therefore if an Annuitie, Common of paſture, Common of Eſtouers, or the like, be granted for life or yeares, &c. the reuerſion may be granted without any attornment, and albeit ſometimes in ſome of theſe caſes or the like, an Attornment be pleaded, yet it is ſurpluſage, and more than needeth, becauſe in none of them there is any Tenure, Attendance, Remainder, or payment out of land. 31.H.7.1. 1.H.5.1.37. Aſſ 14.36. Aſſ.pl 3. 31.H.7.8.cit. Attornement Br 59.

Sect. 557.

¶ Item, ſi ſoit Seignior et tenant, et le tenant leſſa ſon tenement a vn auter p̄ t̄me d̄ vie le remainder a vn auť en fee, et puis le Seignior granta les ſeruices a vn auter, &c. et le teñt a terme de vie attorna, ceo eſt aſſets bone, pur ceo que le Tenant a terme de vie eſt tenaunt en ceſt caſe al ſeignior, &c. et celuy en le remainder ne poit eſtre dit teñt al ſeignior, qãnt a cel entẽt forſque aps la mort le tenant a t̄me de vie, vncore en ceſt caſe ſi celuy en le remainder mourſt ſans hr̃e, le ſeignior auera le remainder p voy deſcheate, pur ceo que com̃t que le ſeignior en tiel cas couient dauower ſur le tenant a terme de vie, &c. vncore tout lentier tenement quant a touts les eſtates de franktenement, ou d̄ fee ſimpl, ou autrement, &c. en tiel cas ſont enſemble tenus d̄ le ſeignior, &c.

¶ Yes

ALſo if there bee Lord and Tenant, & the tenant letteth his tenement to another for terme of life, the remainder to another in fee, and after the Lord grant the ſervices to another, &c. and the Tenant for life attorne, this is good enough, for that the Tenant for life is Tenant in this caſe to the Lord, &c. and he in the remainder cannot be ſaid to be tenant to the Lord, as to this intent, untill after the death of the tenant for life; yet in this caſe if hee in the remainder dieth without heire, the Lord ſhall have the remainder by way of Eſcheat, becauſe that albeit the Lord in ſuch caſe ought to auow upon the tenant for life, &c. yet the whole entire Tenement, as to all the eſtates of the Freehold or of Fee ſimple, or otherwiſe, &c. in ſuch caſe are together holden of the Lord, &c.

¶ * Mes nemy de faire Anowrie ſur eux touts enſemble M.3.H.6.

¶ * But not to make Anowrie upon them all together. M.3. H.6.

15.E.3.Attorn.10. 12.E.44. 18.H.6.2. 9.E.2 tit Attorn.18. 18.E.4.7. Temps E.1.Attorn.22. Vide Sect.580.

¶ *Et le Tenant a terme de vie attorna, &c.* For he that is (as hath beene ſaid) priuie and immediately Tenant to the Lord muſt attorne: and that is in this caſe, The Tenant for life, and ſo of the other ſide if a Seigniorie be granted to one for life, the remainder to another in fee, the Attornement to the Tenant for life is an Attornement to the remainder alſo; vnleſſe it be that they in the remainder ought to haue acquitall or other priuiledge, (whereof they ſhould be preiudiced) and then albeit an Attornement be had to the Tenant for life, and he acknowledge the acquitall, &c. yet after his deceaſe he in remainder ſhall not diſtreyne vntill he acknowledge the Acquitall, notwithſtanding the Attornement of the Tenant for life.

3 Co 226. ante 152 Pm. Dy. 154.

¶ *Auera le remainder per voy deſcheat.* For the remainder is holden of the Lord, but not immediately holden, & in this caſe by the eſcheat of the remainder the Seigniorie is extinct, for the fee ſimple of the Seigniorie being extinct, there cannot remaine a particular eſtate for life thereof, in reſpect of the Tenure and attendance ouer, and of this opinion is Littleton (a) himſelfe in our Bookes. But otherwiſe it is of a Rent charge in fee, for if that be granted for life, and after he in the reuerſion purchaſe the land, ſo as the reuerſion of the Rent charge is extinct, yet the Grantee for life ſhall enioy the rent during his life, for there is no Tenure or attendance in this caſe.

3.H.6.1.Old Tenures 107
(a)15.E.4.13.2.
ante 148 Pm.

M 3.H.6.1.

¶ * *Mes nemy de faire Anowrie, &c.* This is added to Littleton, but it is conſonant to Law, and the authoritie truly cited.

Sect. 558.

¶ Item, ſi ſoit Seignior et tenant, et le tenant leſſa les tenements a vn feme pur terme de vie, le remainder ouſter en fee, et la feme prent baron, et puis le ſeignior granta les ſeruices, &c. a le baron et ſes heires, en ceſt caſe le ſeruice eſt mis en ſuſpence durant le couerture. Mes ſi la feme deuie viuant le Baron, le baron et ſes heires aueront le rent de ceux en le remainder, &c. et en ceo caſe il ne beſoigne alcun attornement per parol. &c. pur ceo que le baron que doit attorn̄ accepta le fait del graunt de les ſeruices, &c. le quel acceptance eſt vn attornment en la Ley.

ALſo if there bee Lord and Tenant, and the Tenant letteth the tenements to a woman for life, the remainder ouer in fee, and the woman taketh husband, and after the Lord grant the ſeruices, &c. to the husband and his heires, in this caſe the ſervice is put in ſuſpence during the Couerture: but if the wife die living the husband, the husband and his heires ſhall have the rent of them in the remainder, &c. And in this caſe there needeth no Attornment by parol, &c. for that the husband which ought to attorne, accepted the deed of grant of the ſervices, &c. the which acceptance is an attornment in Law.

3.E.3.42. 15.E.3.Attornement,11.

¶ *Le quel acceptance eſt vn attornement en la Ley, &c.* Littleton hauing ſpoken (as hath beene ſaid) of Attornements in Deed or expreſſe, now commeth to ſpeake of Attornements in Law, or implied, & hauing before ſet downe fiue expreſſe Attornments in Deed, doth in this Chapter enumerate ſeuen Attornments in Law. Here it is to be vnderſtood, That the expreſſe Attornement of the husband will binde the wife after the couerture,

couerture, and in as much as this acceptance of the grant is an Attornment in Law without a word of Attornement the Seigniorie shall passe. And this is the first example that Littleton putteth of an Attornement in Law, which amounteth to an expresse Attornement, for that it is an agreement to the grant. 44.E.3.tit.Fines 37. 12.H.4.4.

If the Lord grant his Seigniorie to the Tenant of the Land, and to a stranger, and the Tenant accept the Deed, this acceptance is a good Attornement to extinguish the one moitie, and to vest the other moitie in the Grantee, as hath beene said.

Sect. 559.

Eſm̃ le manner eſt, ſi ſoyent Seignior & tenant & le tenant prent fem, et puis le Seignior granta les ſeruices a la feme et ſes heirs, & le baron accepta le fait, en ceſt cas apres la mort le baron, la feme et ſes hr̃es aueront les ſeruices, &c. car per le acceptance del fait per l' baron, ceo eſt bone attornement, &c. coment que durant la couerture les ſeruices ſont mis en ſuſpence, &c.

IN the ſame manner is it, if there be Lord & tenant, and the Tenant taketh wife, and after the Lord grant his ſervices to the wife and his heires, & the husband accepteth the deed. In this caſe after the death of the huſband the wife and her heires ſhall have the ſervices, &c. for by the acceptance of the deed by the husband, this is a good attornement, &c. albeit during the coverture the ſervices ſhall be put in ſuſpence, &c.

HEre is the ſecond example that Littleton putteth of an Attornment in Law, and ſtandeth vpon the former reaſon.

Sont miſe en ſuſpence. Suſpence commeth of ſuſpendeo, and in Legal vnderſtanding is taken when a Seigniorie, Rent, Profit apprender, &c. by reaſon of vnitie of poſſeſſion of the Seigniorie, Rent, &c. and of the land out of which they iſſue are not in eſſe for a time, & tunc dormiunt, but may be reuiued or awaked. And they are ſaid to be extinguiſhed when they are gone for euer, & tunc moriuntur, and can neuer be reuiued, that is, when one man hath as high and perdurable an eſtate in the one as in the other.

Sect. 560.

ITem, ſi ſoyent Seignior & tenant, et l' tenãt granta les tenements a vn home pur terme d' ſa vie, le remainder a vn auter en fee, ſi le Seignior granta les ſeruices a le tenant a terme d' vie en fee, en ceſt cas le tenant a

ALſo if there bee Lord and Tenant, and the Tenant grant the tenemẽts to a man for terme of his life, the remainder to another in fee, if the Lord grant the ſervices, to the Tenant for life in fee, in this caſe the tenant for terme of life

HEre is the third caſe that Littleton putteth of an Attornment in Law. And it is to bee obſerued, that albeit a grant as hath been ſaid, may enure by way of releaſe, & a releaſe to the Tenant for life doth worke an abſolute extinguiſhment, whereof he in the remainder ſhall take benefit, yet the Law ſhal neuer make any cõſtructiõ againſt the purport of the grãt to the prejudice of any, or againſt the meaning of the parties as

here it should, for if by construction it should enure to a release, the heirs of the Tenant for life should be disherited of the rent, and therefore Littleton here saith, that the heires of the grantée, shal haue the seignorie after his death. And here is an Attornement in law to a grant suspended that cannot take effect in the Grantée so long as he liueth, but shal take effect in his heires by descent, for the Inheritance of the Seignorie was in the Tenant for life, and the suspension onely during his life.

terme de vie ad fee en les seruices. Mes les seruices sont mis en suspence durant sa vie. Mes les hẽs le tenant a terme de vie aueront les seruices apres ẽ decease, &c. Et en cest cas il ne besoigne attornement, car per lacceptance del fait ô celuy, q̃ doit attourner, &c. est ceo attournement de luy mesme.

hath a fee in the services; but the services are put in suspence during his life. But the heires of the Tenant for life shall have the services after his decease, &c. And in this case there needeth no Attornement, for by the acceptance of the Deed by him which ought to attorne, &c. this is an Attornment of it selfe.

Sect. 561.

¶ Mes lou le tenant ad cy grand & haut estate en les tenements, sicome le Seignior ad en le Seigniory, en tiel case, si le Seignior graunta les seruices al tenant en fee, ceo vyera per voy dextinguishment, causa patet.

But where the Tenant hath as great and as high estate in the tenements, as the Lord hath in the Seigniory, in such case if the Lord grant the services to the Tenant in fee, this shall enure by way of extinguishment, *Causa patet.*

¶ Here Littleton intendeth not onely as great and high an Estate, but as perdurable also, as hath beene said, for a Disseisor or Tenant in fee vpon condition hath as high and great an Estate, but not so perdurable an Estate, as shall make an extinguishment.

Sect. 562.

¶ Here in this case hée in the Reuersion of the tenancy must attorne, because he is the Tenant to the Lord, and yet the Seignorie shall bee suspended during the life of the Grantée, because hée hath an estate for life in the Tenancie, but his heires shall enioy the Seignorie by Discent.

¶ Item, si loyent Seignior & tenant, & l' tenant fait vn leas a vn hõe pur terme ô sa vie, sauant l' reuersiõ a luy, si l' Seignior granta l' Seignorie a le tenant a terme de vie ẽ fee, ẽ cest case il couient

Also if there bee Lord and Tenant, and the tenant maketh a Lease to a man for terme of his life, saving the reversion to himselfe if the lord grãt the seigniory to tenãt for life in fee; In this case it behoveth that he in the rever-

¶ *Vncore il ne*

ent que celuy en le reuersion attorna al tenant a terme d̄ vie per force d̄ cel grant, ou autrement l' grāt est void̄, pur ceo que celuy en le reuersion est tenāt al Sñr, &c.

¶ * Et uncore il ne tiendra d̄l tenant a terme de vie, durāt sa vie. Causa patet. * ¶

sion must attorne to the tenant for life by force of this grant, or otherwise the grant is voide, for that he in the reversion is tenāt to the Lord, &c.

* ¶ Yet hee shall not hold of the tenant for life during his life. *Causa patet, &c.*

tient, &c. This is added, and not in the originall and is against Law, and therefore to be reiected.

¶ *Tenant al Seignior, &c.* Here is to be vnderstood a diuersity when the whole estate in the Seigniory is suspended, and when but part of the estate in the Seigniory is suspended. And in this case the Seigniorie is suspended but for terme of life, (a) and therefore as to all things concerning the right it hath his being, but as to the possession during the particular estate the Grantee shall take no bene- (a)34.Ass.p.15.

fit of it, therfore during that time he shall haue no Rent, Seruice, Wardship, reliefe, Harriot, or the like, because these belong to the possession, but if the Tenant dieth without heire, the Tenancie shal escheat vnto the Grantee, for that is in the right, and yet when the Seigniorie is reuiued by the death of the Tenant, there shall be Wardship, as if the Tenant marry with the Seignioresse and dieth, his heire within age, the wife shall haue the Wardship in the heir. Also in the case that Littleton here putteth, albeit the Seigniorie be suspended but for life, yet some hold that he cannot grant it ouer because the Grantee tooke it suspended, and it was neuer in esse in him, but if the Tenant make a Lease for yeares or for life to the Lord, there the Lord may grant it ouer because the Seigniorie was in esse in him, and the fee simple of the Seigniorie is not suspended, but if the Lord disseise the Tenant, or the Tenant enfeoffe the Lord vpon Condition, there the whole estate in the Seigniorie is suspended, and therefore hee cannot during the suspension take benefit of any Escheat, or grant ouer his Seigniorie. 16.E.3.tit.Voucher.83. 5.E.3.Twongs case.

Sect. 563.

¶ Item, si soient seignior et tenant, et le tenāt tient del Seignior per xx. maners des seruices, et le Seignior granta son seigniory a vn auter, si le tenant paya en fait ascun parcel dascun de les seruices al grauntee ceo est bone attornment, de et pur touts les seruices, com̄t que lentent de le ten̄ fuit dattourner forsque de cel parcel pur ceo que le seigniory est entier, coment que ils sont di-

ALso if there bee Lord and tenant, and the tenant holdeth of the Lord by xx. manner of services, and the Lord grant his Seigniory to another, if the tenant pay in Deed any parcel of any of the services to the Grantee, this is a good Attornement, of and for all the services, albeit the intent of the tenāt was to attorn but for this parcell, for that the Seigniory is intire, although there bee divers man-

¶ HEre it appeareth that an attornment being made for parcell, is good for the whole, for seeing hee hath attorned for part, it cannot bee void for that, and good it cannot be vnlesse it be for the whole: but of this sufficient hath beene said before in this Chapter. 4.E.3.55.Malmans case. 29.E.3.23. 5.E.4.2. 22.Ass.66. 7.H.4.10. 35 H.6.8.Per Prisott.

¶ *Paya ascun parcell des services.* Here is the fourth example of an Attornement in Law. for payment of any parcell of the seruices is an agreement in Law to the grant. 40.E.3.34.

¶ *Coment que lentent del tenant fuit dattorner, &c.*

Quia intentio inſeruire debet legibus, non leges intentioni. And yet as farre as it may ſtand with the rule of Law, it is honourable for all Iudges to iudge according to the intention of the parties, and ſo they ought to doe. And of this somewhat in this Chapter hath beene ſaid before.

20.H.6.

uers maners des ſeruices que le tenant doit faire, &c.

ner of ſervices which the tenant ought or doe, &c.

Sect.564.

48.E.3.24. 3.E.3. Quid iuris clamat. 4.E.3.28.29. 37.H.6.14. per Moyle. 17.E.3.29.

THere is to bee obſerued that this iudgement in the Scire facias (which is no more but that the Demandant ſhall haue execution, &c.) is a good Attornement, albeit it is preſumed that Iudicium reditur in inuitum, and that an Attornement in Law of any part is good for the whole. And this is the firſt example that Littleton putteth of an Attornement in Law.

Note that in caſe of a Deed nothing paſſeth before Attornement as hath beene ſaid, In the caſe of the Fine, the thing granted paſſeth as to the ſtate, but not to diſtraine, &c. without attornement. In the caſe of the King the thing granted doth paſſe both in eſtate and in priuitie to diſtraine, &c. without Attornement, vnleſſe it be of Lands or tenements that are parcell of the Dutchy of Lancaſter, and lie out of the County Palatine.

ITem, ſi ſoit ſeignior et tenant, et le tenant tient del ſñr per pluſors maners des ſeruices, et l'ſñr granta les ſeruices a vn auter per fine, ſi le grantee ſua vn Scire facias hors del meſme le fine pur aſcun parcel de les ſeruices, et ad iudgement de recouer, cel iudgement eſt bone attornement en ley, pur touts les ſeruices.

ALſo if there bee Lord and tenant, and the tenãt holdeth of the Lord by many kinde of ſervices, and the lord grant the ſervices to another by fine, if the grantee ſue a *Scire facias* out of the ſame fine for any parcell of the ſervices, and hath iudgment to recover, this iudgmẽt is a good attornmẽt in law for all the ſervices.

Sect.565.

ITem, ſi le Seignior dun rent ſeruice graunta les ſeruices a vn auter, et le tenant attorna per vn denier, et puis le grantee diſtraine pur le rent arere, et le tenant a luy fait reſcous, en ceo cas le grauntee nauera aſſiſe del rent, forſque briefe de reſcous, pur ceo que le don del denier per le tenant, ne fuit forſque per voy dattornement, &c. Mes ſi le tenant auoit done a le grauntee le dit denier, come parcel de le rent, ou vn maile, ou vn farthing per voy de ſeiſin

ALſo if the Lord of a Rent ſervice grant the ſervices to another, and the tenãt attorne by a penny, and after the Grantee diſtraine for the rent behinde, & the tenant make reſcous, In this caſe the grãtee ſhall not have an Aſſiſe for the rent but a writ of reſcouſe, becauſe the giving of the penny by the tenant was not but by way of attornement, &c. but if the tenant had given to the grantee the ſaid penny as parcell of the rent, or halfe a penny or a farthing by way of ſeiſin of the rent then this

ſeiſin del rent, donque ceo eſt bone attornement, et aury eſt bone ſeiſin al grauntee del rent, et donqꝫ ſur tiel reſcous le grantee auera aſſiſe, &c.

is a good attornement, and alſo it is a good ſeiſin to the Grantee of the rent, and then upon ſuch reſcous the Grantee ſhall have an aſſiſe, &c.

THereupon is to be obſerued a diuerſitie betweene money giuen by way of Attornment, and where it is giuen as parcell of the rent by way of ſeiſin of the Rent. For albeit the rent be not due before the day, yet a payment of parcell of the rent before hand is an actuall ſeiſin of the rent to haue an Aſſiſe. And ſo it is if he giue an oxe, a horſe, a ſheep, a knife, or any other valuable thing in name of ſeiſin of the rent before hand, this is good. And therefore a payment in name of ſeiſin is more beneficiall for the Grantee, becauſe that is both an actuall ſeiſin and an attornement in Law, and yet being giuen before the day in which the rent is due, it ſhall not be abated out of the rent. So, as to giue ſeiſin of the rent, it is taken for part of the rent, but as to the paiment of the rent it is accounted as no part of the Rent, and the reaſon of the diuerſitie is for that remedies to come to rights or duties are euer taken fauourably. Here alſo appeareth that there is an actuall ſeiſin, or a ſeiſin in deed of a rent, whereof (as Littleton here ſpeaketh) an Aſſiſe doth lie, and a ſeiſin in Law which the Grantee hath by Attornement before actuall poſſeſſion.

39.H.6.3.26. 5 E.4.2. Vide Sect.235. 25.E.3.44. 49.E.3.15. 37.H.6.39. 49.Aſſ.p.6. 31.H.6.42. 15 E 3. Execution 63. 40.E.3.12 28.H.6.6.b. 7.H.4.2.tit.Attorney Br. 97.

Sect. 566.

¶ Itē, ſi ſont pluſors Jointenãts que teignont p certaine ſeruices, et le Seignior graunta a vn auter les ſeruices, et vn ō les Jointenants attorna al grauntee, ceo eſt aury bon, ſicōe touts vſſent attorne, pur ceo que le ſeigniory eſt entire, &c.

ALſo if there bee many jointtenants which hold by certaine ſervices, and the lord grant to another the ſervices, and one of the Joyntenants attorne to the grantee, this is as good as if all had attorned, for that the Seigniorie is entire, &c.

THere is to bee obſerued what manner of Tenants ſhall attorne to the Grant. And firſt (b) if there be two or more Joynttenants, and one of them attorne, it is ſufficient: for as it hath beene often ſaid, there cannot be an attornement in part. And albeit there is great Authoritie againſt Littleton, yet the Law hath beene adiudged according to Littletons opinion, as it hath beene in other of his caſes when they haue come in queſtion, and as it is of an Attornement, ſo it is of a ſeiſin, a ſeiſin of a rent by the hands of one Joynttenant is good for all, and a ſeiſin of part of the rent is a good ſeiſin of the whole.

(b) 10.H.6.3.26. See Tookers caſe vbi ſupra, and the Authorities there cited.

(c) If either the Grantor or the Grantee die, the Attornement is countermanded, but if the Tenant die, he that hath his eſtate may attorne at any time. If the Tenant grant ouer his eſtate, his aſſignee may attorne.

(c) Vid lib.4.fo.8.lib 6. fol 57 lib 9.fol.34. Vid.4.H.6 29. 18.E.4.18.

(d) If an Infant hath lands by purchaſe or by deſcent, he ſhall be compelled to attorne in a Per quæ ſeruitia, and no miſchiefe to the Infant. for when he commeth to full age he may diſclaim to hold of him, or he may ſay that he holds by leſſer ſeruices, but there ſhould be a greater miſchiefe for the Lord if the Attornement of an Infant ſhould not be good, for he ſhould loſe his ſeruices in the meane time.

(d) 42.E.3.Age 33. 26.E.3.6. 27. 8.tit Attorne.Br 26.E.3.62. 26.Aſſ.27. 31.E.3. tit.per quæ ſeruic.9. 2.E 2 ttorn.78. 2.E.2.ibid 77. 8 H.6.2. Lib.9 fo.84.85 Conyes caſe. 4 Mar.Dier 137. 21 E.3.Age 85. 7 E.2.Age 140.

If an Infant be a Leſſee, he ſhall be compelled to attorne in a Quid iuris clamat. The Attornement of an Infant to a grant by Deed is good, and ſhall binde him, becauſe it is a lawfull act, albeit he bee not vpon that grant by Deed compellable to attorne. Of Baron and Feme Littleton putteth many caſes in this Chapter.

(e) A man that is deafe and dumbe, and yet hath vnderſtanding, may attorne by ſignes: (f) but one that is not Compos mentis cannot attorne, for that he that hath no vnderſtanding cannot agree to the Grant.

(e) 5 E.3.63. (f) 18.E.3 53.

What conueyances ſhall be good without Attornements more ſhall be ſaid in this Chapter in his proper place.

Sect. 567.

¶ Item, si home lessa tenemẽts a terme dans, per force de quel lease le Lessee est seisie, et puis le Lessor per son fait grant a le reuersion a auter pur terme de vie, ou en taile, ou en fee, il couient en tiel case que le Tenãt a terme dans attorna, ou autrement rien passera a tiel grantee per tiel fait. Et si en cest case l'tenant a terme dans attorna al Grantee, donque maintenant passera le Franketenement al Grauntee per tiel atturnement sauns alcun liuerie de seisin, &c. pur ceo que si alcun liuerie ô seisin, &c. serra ou besoigne destre fait en cel case, donque le tenant a terme dans serroit al temps de liuerie de seisin ouste de son possession, le quel serroit encounter reason, &c.

ALso if a man letteth tenements for terme of yeares, by force of which Lease the Lessee is seised, and after the Lessor by his Deed grant the reversion to another for terme of life, or in Taile, or in Fee, it behooveth in such case that the Tenant for yeares attorne, or otherwise nothing shall passe to such grantee by such deed, And if in this case the Tenaunt for yeares attorne to the Grantee, then the Freehold shall presently passe to the Grantee by such attornment without any liverie of seisin, &c. because if any liverie of seisin, &c. should be or were needfull to bee made, then the Tenant for yeares should be at the time of the Livery of seisin ousted of his possession, which should bee against reason, &c.

¶ HEre Littleton hauing spoken of Grants of Seigniories and Rent charges, and Rents seeke issuing out of land, here treateth of a Grant of a Reuersion of land vpon an estate for yeares, seeing this grant of the Reuersion must be by Deed and the agreement of the Lessee for yeares requisite thereunto, the Freehold and Inheritance do passe thereby, as well as by liuerie of seisin, if it were in possession: and the grant of the reuersion by Deed with the Attornement of the Lessee, do counteruaile in Law a Feoffment by Liuerie, as to the passing of the Freehold and Inheritance.

(g) 6.E.3.53. 25.E.3.53. Brook. Tit. Attorn. 48. 32.E.3. Scir. fac. 101. Dy. 1,2.

¶ *A terme dans.* (g) And yet a Tenant by Statute Merchant, or Tenant by Statute Staple, or by Elegit, must also attorne, for the Grantee may haue a Venire facias ad computandum, or tender the money, &c. and discharge the Land, & if the reuersion be granted by fine, they shall be compelled to attorne in a Quid iuris clamat.

And so the Executors that haue the land vntill the debts bee paid must attorne vpon the grant of the Reuersion, although they haue not any certaine terme for yeares.

Sect. 568.

¶ HEere Littleton speaketh of a reuersion expectant vpon an estate for life, or a gift in taile

¶ Item, si Tenements soiẽt lesses a vn home pur terme de vie, ou done en le taile sauãt le

¶ *Il couient que le Tenant de la Terre at-*

ALso if Tenements be letten to a man for terme of life, or given in taile, saving the reversion, &c. if hee in

le reuerſion, &c. ſi celuy en le reuerſion en tiel caſe grant a le reuerſion a vn auter per fon fait, il couient que le Tenant de la Terre attourna al grantee en la vie le grantor, ou auterment, le graunt eſt voyd.

the reverſion in ſuch caſe grant the reverſion to another by his Deed, it behooveth that the Tenant of the Land attorne to the Grantee in the life of the grantor, or otherwiſe the Grant is voyd.

cannot be Tenant in Dower, or Tenant by the Curteſie. And if the Reuerſion be granted by Fine, the Fine muſt ſuppoſe that the Tenant in Dower or by the Curteſie, did hold the land, albeit they had formerly granted ouer their eſtate, and albeit the Reuerſion doth paſſe by the Fine, yet the Quid iuris clamat muſt be brought againſt him that was Tenant at the time of the note leuied. But yet after the Reuerſion is granted ouer, the Grantee ſhall not haue any Action of Waſte againſt the Tenãt in Dower or by the Curteſie, but the Action of waſt muſt be brought againſt their Aſſignée, and not againſt themſelues, for Tenant by the Curteſie or Tenant in Dower cannot hold of any but of the heire: and therefore in reſpect of the priuitie, they ſhall attorne & be ſubiect to an Action of waſte, as long as the reuerſion remaineth in the heire, albeit they haue granted ouer their whole eſtate. And it is worthy of the obſeruation, that if the grantée of the reuerſiõ doth bring an action of waſt againſt the aſſignée of the tenant by the curteſie, (b) the pl. muſt rehearſe the ſtat. which prouideth that no prohibition of waſte in that caſe lay at the common law, as it did if the heire had brought it againſt the tenant by the curteſie himſelfe: and therefore ſome doe hold, that if the heire doe grant ouer the reuerſion, that the attornement of the Aſſignée of the Tenant by the curteſie, or of Tenant in Dower is ſufficient, because they afterward muſt be attendant and ſubiect to the Action of Waſte.

(b) Regiſt. 72.

If the reuerſion of Leſſée for life be granted, and Leſſée for life aſſigne ouer his eſtate, the Leſſée cannot attorne, but the attornement of the Aſſignée is good, because (as Littleton here ſaith) it behoueth that the Tenant of the Land doe attorne, and after the aſſignement there is no tenure or attendance, &c. betweene the Leſſée and him in reuerſion.

18 E.4.10.b.26.E.3.62a

If Leſſée for life aſſigneth ouer his eſtate vpon condition, he hauing nothing in him but a Condition ſhall not attorne, but the Aſſignée may attorne becauſe he is Tenant of the land.

5.H.5.10.

torne al Grantee, &c. Let vs therefore first make of Tenant for life; and yet in ſome caſe albeit Tenant for life hath granted ouer his Eſtate, yet he ſhall atturne, (a) as if Tenant in Dower or by the Curteſie, grant ouer his or her eſtate, and the heire grant ouer the reuerſion, the Tenant in Dower or by the Curteſie may atturne, becauſe at the time of the grant made they were attendant to the heire in reuerſion, and the Grantee

(a) 10.H.4.tit.Attorn.16. 11.H.4.18. 30.E.3.16. 38.E.3.23. 18.E.3.3. 10.E.3. Quid iuris clam.41. 41.E.3.18. Temps E.1.tit.Waſt.121.

F.N.B.55.E.Regiſt.f.72. 4.E.3.26.

Sect. 569.

CEN meſm̃ l' maner eſt, ſi terre ſoit done en taile, ou leſſe a vn hõe p̃ terme de vie, le remainder a vn aut̃ en fee, ſi celuy en l' remainder voile granter ceſt remaind̃ a vn auter, &c. ſi le tenant d̃l la terr̃ attorna en la vie le grantor, donques l' grant de tiel rem̃ eſt bon, ou auterment nemy.

IN the ſame manner is it, if land be grãted in taile, or let to a man for term of life, the remainder to another in fee, if he in the remainder will grant this remainder to another, &c. if the tenant of the land attorne in the life of the Grantor, then the grant of ſuch a remainder is good, or otherwiſe not.

CLittleton alſo ſpeaketh here of an Attornement by Tenant in Taile, and true it is that he may attorne, but where the reuerſion is granted by fine, hee is not cõpellable to attorne, becauſe he hath an eſtate of Inheritance which may continue for euer. And ſo it is of a tenant in taile after poſſibilitie of Iſſue extinct, he ſhall not be compelled to attorne for the Inheritance which was once in him. (c) But if Tenant in taile after poſſibilitie of Iſſue extinct grant ouer his Eſtate, his aſſignée ſhall be compelled to attorne, becauſe he neuer had but a bare ſtate for life.

12.E.4.3.4. 3.E.4.11. 43.E.3.1. 46.E.3.13.

5.H.5.

20.E.3 Quid iuris clam. 50.

(c) See the Chap. of Tenant in taile after poſſibilitie of Iſſue extinct. And Ewins caſe there cited to be adiudged.

But

But as to Tenant in taile note a diuerſitie betweene a Quid iuris clamat, & a Quem redditum reddit, or Per quæ ſeruicia, for against a Tenant in Taile, no Quid iuris clamat lieth, as is aforeſaid. But if a man make a gift in taile, the remainder in fee, and the Seigniorie or Rent charge iſſuing out of the land be granted by Fine, the Conuſee ſhall maintaine a Per quæ ſeruicia, or a Quem redditum, and compell him to attorne, for herein his eſtate of Inheritance is no priuiledge to him, for that a tenant in Fee ſimple (as his eſtate was at the Common Law) is alſo compellable in theſe caſes to attorne.

Sect.570.

C*P 12.E.4. Et la eſt tenus per tout le Court, que Tenant in Taile ne ſerra arct datturner, mes ſil atturna gratis, ceſt aſſets bone.*

P 12. *Edw.* 4. It is there holden by the whole Court, that Tenant in Taile ſhall not be compelled to attorne, but if he will attorne *gratis*, it is good enough.

12.E.4 3.4. C This is added to Littleton, and therefore though it be good Law, and the Booke truly cited, yet I paſſe it ouer.

Sect.571.

C Item, ſi terre ſoit leſſe a vn home pur terme dans le remainder a vn auter p terme de vie, reſeruant al Leſſour vn certaine rent per an, et liuerie de ſeiſin ſur ceo eſt fait al tenant p terme dans, ſi ceſtuy en le reuerſion en ceſt caſe granta le reuerſion a vn auter, &c. et le tenant que eſt en le remainder apres le terme dans ſoy attourna, ceo eſt bone Attournement, et celuy a que ceſt reuerſion eſt graunt per force de tiel Attournement diſtreynera le Tenant a terme dans pur le Rent due apres tiel Attornment, coment que le tenᵗ a terme dans ne vnques atournaſt a luy. Et la cauſe eſt, p ē que lou le reūſion eſt dependant ſur leſtate del franktenemᵗ, ſuffiſt que le ť del franktenemᵗ attourna ſʒ tiel grant del Reūſion, &c.

ALſo if Land bee let to a man for years, the remainder to another for life, reſerving to the Leſſor a certaine rent by the yeare, & Liverie of Seiſin upon this is made to the Tenant for yeares, if hee in the Reverſion in this caſe grant the Reverſion to another, &c. and the Tenant which is in the Remainder after the terme of yeares attorne, this is a good Attornement, and hee to whom this Reverſion is granted, by force of ſuch Attornement ſhall diſtreine the Tenant for yeares for the Rent due after ſuch Attornement, albeit that the tenant for years did never attorne unto him. And the cauſe is for that where the Reverſion is depending upon an eſtate of freehold it ſufficeth that the Tenant of the Freehold doe attorne vpon ſuch a Grant of the reverſion, &c.

C *Vſſiſt que le Tenant del Franketenement attorna.* Note Littleton ſaith not here, That the Tenant of the Franketenement ought in this caſe to attorne, but that it

it ſufficeth that he doth attorne. And I heard Sir Iames Dier Chiefe Iuſtice of the Common Pleas hold, that in this caſe if the Tenant for yeares did attorne, it would veſt the reuerſion, for ſeeing the eſtate for yeares is able to ſupport the eſtate for life, he ſhall binde him in the remainder by his Attornment in reſpect of his eſtate and profitte.

Paſch. 15. Eliz. in Braſbritches caſe in Cõmuni Banco.

Sect. 572.

CEt eſt aſcauoir, que lou vn leas a terme dans, ou a terme de vie ou done en taile eſt fait a aſcun home, reſeruant a tiel leſſor, ou donor vn certaine rent, &c. ſi tiel leſſor, ou donor, graunta ſon reuerſion a vn auter, & le tenant del terre attourna, le rent paſſa al grauntee, coment q̃ en le fait del grant de reuerſion nul mentiõ ſoit fait de le rent, pur ceo que le rent eſt incident al reuerſion en tiel caſe, & nemy è converſo, &c. Car ſi home voile graunter le rent en tiel caſe a vn auter, reſeruant a luy le reuerſion del terre, coment que le tenant attorna a le grauntee, ceo ſerra forſque vn rent ſecke, &c.

AND it is to bee vnderſtood, that where a leaſe for yeares or for life, or a gift in taile is made to any man reſerving to ſuch Leſſor or Donor a certaine rent, &c. if ſuch Leſſor or Donor grant his Reverſion to another, & the tenant of the land attorne, the rent paſſeth to the Grantee, although that in the deed of the Grant of the Reverſion no mention bee made of the rent, for that the rent is incident to the Reverſion in ſuch caſe, and not *è converſo, &c.* For if a man will grant the rent in ſuch caſe to another, reſerving to him the Reverſion of the Land, albeit the Tenant attorne to the Grantee, this ſhall bee but a Rent ſecke, &c.

Of this Littleton hath ſpoken before in the Chapter of Rents, *f.* 229.

*Sect.*573.

CItem, ſi hõe leſſa terre a vn auter p̃ term̃ ď ſa vie & puis il confirma p̃ ſon fait leſtate ďl tenant a term̃ ď vie, le remainder a vn auter en fee, & le tenant a terme ď vie accepta le fait, donques eſt le remainder en fait en celuy a que le remainder eſt done ou limitte per meſme le fait, car per lacceptance del tenant a term̃ de vie del le fait, ceo eſt vn agreement del luy, & iſſint vn attornement en ley. Mes vncore celuy en le remainder nauera aſcun action

ALſo if a man let land to another for his life, and after hee confirme by his Deed the eſtate of the Tenant for life, the remainder to another in fee, and the Tenant for life accepteth the Deed, then is the remaynder in fait in him to whom the remaynder is given or limited by the ſame Deed. For by the acceptance of the Tenant for life of the deed, this is an agreement of him, and ſo an Attornement in Law. But yet hee in the remainder ſhall not have any acti-

tion de Waste ne auter benefit per tiel remainder, si non que il auoit l' dit fait en poigne, per que le remainder fuit taile ou graunt a luy. Et pur ceo que en tiel cas le tenant a term̃ de vie voile p cas reteigner le fait a luy, a cel entent que celuy en le remainder nauer-roit ascun action d̃ Waste enuers luy, pur ceo que il ne poit vener dauer le fait ẽ sa possession, il ser-ra bone & sure chose en tiel cas pur celuy en le remainder, que vn fait endent soit fait per celuy que voile faire tiel confirmation, & le remainder ouster, &c. & que celuy que fait tiel confirmation deliuera vn part del Indenture al tenant a terme de vie, & le au-ter part a celuy que auera le re-mainder. Et donque il per mon-strance de le part del endenture, poit auer action de Waste enuers le tenant a terme de vie, et touts auters aduantages que celuy en le remainder poit auer en tiel case, &c.

on of Waste nor other benefit by such remainder, unlesse that hee hath the said Deed in hand where-by the remainder was entayled or granted to him. And because that in such case the Tenant for life peradventure will retaine the Deed to him to this intent that he in the remainder should not have any action of Waste against him, for that hee cannot come to have the Deed in his possession, it will bee a good and sure thing in such case for him in the remainder, that a Deed indented be made by him which will make such Confirma-tion and the remainder over, &c. and that he which maketh such Confirmation deliver one part of the Indenture to the Tenant for life, and the other part to him that shall have the remainder. And then he by shewing of that part of the Indenture may have an Actiõ of waste against the tenant for life and all other advantages that he in the remainder may have in such a case, &c.

Vid. Sect. 325. 575.
Vide Pl. Com. in Colthirsts case. Doct. & Stud. cap. 20. fol. 93, 94.
8. R. 2. in Waste in Liuer escrite.
17. E. 3. confirmat. 4.
35. H. 6. fol 8. 14. H. 8. Pl. Com. 149. in Throckmortons case. 45. E. 3. 14. 15. 11. H. 4. 39. 14. H. 4. 31.

HEre Littleton putteth a case of a remainder whereunto an Attornement is requisite, And this is the first example of an Attornement in Law.

¶ *Remainder a vn auter, &c.* Of this sufficient hath beene said in the Chapter of Confirmation. Sect. 525.

¶ *Si non que il auoit le fait en poigne.* And albeit he hath no remedy to come to the Deed during the life of Tenant for life, yet because he is priuie in estate, he shall not maintaine an Action of waste without shewing the Deed, but when the remainder is once executed, he shall not need to shew the Deed.

¶ *Il serra bone & suer chose, &c.* Hereby it appeareth how necessary it is to vse learned aduice in a mans Conueyance, for thereby shall be preuented many questions and not to follow the aduice of him that is experimented onely. For as in Physick, Nullum medica-mentum est idem omnibus, so in Law one forme or president of conuciance will not fit all cases.

Sect. 574.

ITem, ſi deux Joyntenants ſont, l'vn queux leſſont lour terr a vn auter pur terme de vie, rendant a eux & a lour heires certaine rent per an, en ceſt caſe ſi vn des Joyntenants en le reuerſion, releſſa a lauter Joyntenant en meſme le reuerſion, ceſt releas eſt bone, & celuy a que le releas eſt fait auera ſolemẽt le rent del tenant a terme de vie, & auera ſolement vn briefe de Waſte enuers luy coment q̃ il ne vnques attorneroit per force de tiel releas, &c. Et la cauſe eſt pur le priuity que vn foits fuit perenter le tenant a terme de vie, & eux en le reuerſion.

ALſo if two Joyntenants bee, who let their Land to another for terme of life rendring to them and to their heires a certaine yearly Rent: In this caſe if one of the Joyntenants in the reverſion releaſe to the other Joyntenant in the ſame reverſion this releaſe is good, and he to whom the releaſe is made ſhall have onely the rent of the Tenant for life, and ſhall only have a Writ of Waſte againſt him although hee never attorned by force of ſuch releaſe, &c. And the reaſon is for the privitie which once was betweene the Tenant for life and them in the reverſion.

¶ *Deux ioyntenants.* And ſo it is (as it is here to be vnderſtood albeit there be three or more Joyntenants, if one of them releaſeth to one of the other.

It is true, that there is a difference betweene theſe releaſes, for the Releaſe in the one caſe maketh no degree, but he to whõ the Releaſe is made is ſuppoſed in from the firſt Feoffor, & in the other it worketh a degree, and he to whom the releaſe is made is in the per by him, yet in neither of theſe caſes there is requiſite any attornment for both of them are within Littletons reaſon (for the priuitie, &c.) 193. a.

¶ *Pur le priuity, &c.* For if one toyntenant make a leaſe for years, reſeruing a Rent & dieth, the Surviuor ſhall not haue the Rent, and therfore Lit. here addeth materially for the priuity that was betweene the tenant for life & them in the reuerſion. 2. Eliz. Dyer. 176.

And here it is good to be ſeen what grãtors or others that make Conueyances, &c. are ſuch as their Grants or conueyances are either good without Attornement, or where the tenant is no way cõpellable to attorn. Tenãt for life ſhal not be compelled to attorne in a Quid iuris clamat vpon a grant of a reuerſiõ by fine holden of the King in Chiefe without licence, but the reaſon hereof is not becauſe the tenant for life might be charged with the fine, for his eſtate was more ancient than the fine leuied, but becauſe the Court will not ſuffer a preiudice to the King, and the King may ſeiſe the reuerſion and rent, and ſo the Tenant ſhall be attendant to another. Alſo it is a generall rule, that when the grant by fine is defeaſible, there the Tenant ſhall not be compelled to attorne. 45. E. 3. 6. b. 13. Eliz. Dyer. 288. Lib. 3. fol 86. Iuſtice Windhams caſe. 36. H. 6. 24.

If an Infant leuie a fine, this is defeaſible by Writ of Error during his minoritie, and therefore the Tenant ſhall not be compelled to attorne.

So if the Land be holden in ancient Demeſne, and he in the reuerſion leuieth a fine of the reuerſion at the Common Law, the Tenant ſhall not be compellable to attorne, becauſe the eſtate that paſſed is reuerſible in a Writ of Deceit. 5. E. 3. 25. 31. E. 3. Antient Demeſne 16.

So if Tenant in taile had leuied a fine, the Tenant ſhould not be compelled to attorne, becauſe it was defeaſible by the iſſue in taile. 24. E. 3. 25. b. 37. H. 6. 33. 48. E. 3. 23.

But now the Statutes of 4. H. 7. and 32. H. 8. having given a further ſtrength to fines to barre the iſſue in taile, the reaſon of the Common Law being taken away, the Tenant in this caſe ſhall be compelled to attorne, as it was adiudged (*) in Iuſtice Windhams Caſe.

If an alienation bee in Mortmaine, the Tenant ſhall not be compelled to attorne, becauſe the Lord Paramont may defeat it. (*) Lib. 3. fol. 86. Iuſtice Windhams caſe. 17. E. 3. 7. 22. E. 3. 18.

Sect.

Sect. 575.

CEſt meſme le maner, & pur meſme la cauſe eſt, lou hõe leſſa terre a vn auter pur terme de vie, le remainder a vn auter pur terme de vie, reſeruant le reuerſion al leſſour, en ceſt cas ſi celuy en le reuerſion releſſa a celuy en le remainder et a ſes heires tout ſon droit, &c. donqs celuy en le remainder ad vn fee, &c. et il auera vn briefe de Waſt enuers le tenant a terme de vie ſans alc̃ attornement de luy, &c.

IN the ſame manner, and for the ſame cauſe is it, where a man letteth land to another for life, the remainder to another for life, reſerving the reverſion to the leſſor, in this caſe if hee in the reverſion releaſeth to him in the remainder and to his heires all his right, &c. Then he in the remainder hath a fee, &c. And hee ſhall have a writ of Waſt againſt the tenant for life without any attornement of him, &c.

Vide Sect. 549. 553. 555.

This needeth no explication.

Sect. 576,577.

CThere haue bẽne now in all ſeuen examples, that Littleton putteth of an Attornement in Law, and here hee putteth two caſes alſo of a notice in Law. And the reaſon of both theſe are here rendred by Littleton. Firſt for the notice, Littleton ſaith that the Leſſee ſhall not by Law be miſconuſant of the Feoffments that were made of and vpon the ſame land. And the reaſon of the Attornement is becauſe the whole fee ſimple paſſeth by the Feoffment, and the Leſſee by his regreſſe reaueth the reuerſion in the Feoffee, which (ſaith Littleton) is a good Attornement. The ſame Law it is of a Tenant by Statute Merchant or Staple, or Elegit. And ſoit is of a Leaſe for life, as Littleton here ſaith, and ſo it was reſolued (e) in Brasbritches caſe, and after in the Deane of Pauls his caſe in the

46.E.3.30 b.2.H.5.4. 5.H.5.12. 34.H 6.6. 18.E.3.47. 9.H.6 10.

(e) Brasbritches caſe. P.15 Eliz. Deane of Pauls caſe. 20.Eliz.

CItem, ſi home leſſa terres ou tenements a vn auter pur terme des ans, et puis il ouſta ſon termour, et ent enfeoffa vn auter en fee, et puis le tenant a terme dans enter ſur le feoffee, enclaimant ſon terme, &c. et puis fait Waſt, en ceſt caſe le feoffee auera per la ley vn briefe de Waſt enuers luy, et vncore il nattornaſt pas a luy. Et la cauſe eſt, come ieo ſuppoſe, p̃ ceo que celuy que ad droit de auer terres ou tenements pur term̃ dans, ou auterment, ne ſerroit per la ley miſconuſant de les feoffments q̃ fueront faits de

ALſo if a man let lands or tenements to another for terme of yeares, & after he ouſt his termor, and thereof enfeoffe another in fee, and after the tenant for yeares enter vpon the feoffee, clayming his term, &c. & after doth waſte, in this caſe the feoffee ſhall have by law a writ of waſte againſt him, and yet hee did not attorne vnto him. And the cauſe is as I ſuppoſe, for that he which hath right to have lands or tenemẽts for years, or otherwiſe ſhould not by law bee miſconuſãt of the feoffmẽts which were made of and vpon the ſame

de et ſur meſmes les terres, &c. et entant que per tiel feoffment le tenant a terme dans fuit mis hors de ſon poſſeſſiõ, et p ſon entre il cauſaſt le reuerſion deſtre a celuy a que le feoffment fuit fait, ceo eſt bone attornement, car celuy a que le feoffment fuit fait, auoit nul reuerſion deuaunt que le tenant a terme dans auoit enter ſur luy, pur ceo que il fuit en poſſeſſion en ſon demeſne come de fee, et per lenr del tenant a termñ dans il y ad forſque vn reuerſion, quel eſt p le fait l' teñ a term dãs, ſ. p ſon entrie, &c.

lands, &c. and inaſmuch as by ſueh feoffment the tenant for yeares was put out of his poſſeſſion, and by his entrie he cauſed the reverſion to bee to him to whom the feoffement was made, this is a good attornement, for hee to whom the feoffment was made had no reverſion before the tenant for years had entred upon him, for that he was in poſſeſſion in his demeſne as of fee, and by the entrie of the tenant for yeares, he hath but a reverſion, which is by the act of the tenant for yeares, s. by his entrie, &c.

Sect. 577.

MEſme la ley eſt, come il ſemble, lou vn Leas eſt fait pur terme d vie, ſauãt le reuerſion al Leſſor, ſi l' Leſſour diſſeiſiſt le Leſſee, & fait feoffmẽt en fee, ſi le tenant a terme de vie enter et fait Waſte, le feoffee auera briefe de Waſte ſans aſcun auter attournment, Cauſa qua ſupra, &c.

THe ſame Law is, as it ſeemeth where a Leaſe is made for life, ſaving the reverſion to the Leſſor, if the Leſſor diſſeiſe the Leſſee, and make a feoffment in fee, if the tenant for life enter and make waſte the feoffee ſhal have a writ of waſte without any other attornment, *Cauſa qua ſupra, &c.*

Common place. But ſhall the Leſſée in this caſe whether hee will or no doe an act that amount to an Attornement, viz. by his regreſſe or elſe loſe the profit of his land? And ſome doe hold that in that caſe if the leſſée for life doe recouer in an Aſſiſe, this is no Attornement, becauſe hee come to it by courſe of Law, and not by his voluntary act. And yet in that caſe as in the caſe of the fine the ſtate of the reuerſion is in the Feoffee. (f) But others doe hold it all one in caſe of a recouery, and a regreſſe.

(f) 18.E.3.48.b. Lib.6 fol 60.b. Sir Moyle Finches caſe.

(g) If the Leſſor diſſeiſe Tenant for life or ouſte Tenant for yeares, and maketh a feoffment in fée, by this the rent reſerued vpon the Leaſe for life or yeares is not extinguiſhed but by the regreſſe of the Leſſée the rent is reuiued, becauſe it is incident to the reuerſion: and ſo hath it béene adiudged. But if a man bée ſeiſed of a rent in fée, and diſſeiſe the Tenant of the land, and make a feoffment in fée, the Tenant re-entreth, this rent is not reuiued. And ſo note a diuerſitie betwéen a rent incident to a reuerſiõ, and a rent not incident to a reuerſion.

(g) 9.H.6.16. Deane of Pauls caſe, vbi ſupra.

If two ioynt Leſſees for yeares or for life bée ouſted or diſſeiſed by the Leſſor, and he enfeoffe another, if one of the Leſſées re-enter, this is a good Attornement, and ſhall binde both, for an Attornement in Law is as ſtrong as an Attornement in Déed.

If a man make a Leaſe for life, and then grant the reuerſion for life, and the Leſſee attorne and after the Leſſor diſſeiſe the Leſſee for life, and make a feoffment in fée, & the Leſſee re-enter this ſhal leaue a reuerſion in the Grantee for life, and another reuerſion in the Feoffée, and yet this is no Attornement in Law of the Grantée for life, becauſe he doth no act, nor aſſent to any which might amount to an Attornement in Law. Et res inter alios acta alteri nocere non debet. Neither hath the grantée for life the land in poſſeſſion, ſo as he may wel be miſconuſant of the feoffment made vpon the Land, and ſo out of the reaſon of Littleton. But yet the reuerſion in fée doth paſſe to the Feoffee.

Sect. 578.

THere it appeareth, that where the Ancestor taketh an Estate of Freehold, and after a Remainder is limited to his right Heires, that the Fee simple resteth in himself, as well as if it had been limited to him and his heires, for his right heires are in this case words of limitation of estate, and not of purchase. Otherwise it is where the Ancestor taketh but an estate for yeares: As if a Lease for yeares be made to A. the remainder to B. in Taile, the remainder to the right heires of A. there the remainder resteth not in A. but the right heires shall take by purchase if A. die during the estate Tayle, for as the Ancestor and the Heire are Correlatiua of Inheritances, so are the Testator and Executor, or the Intestate and Administrator of Chattels. And so it is if A. make a Feoffment in Fee to the use of B. for life, and after to the use of C. for life or in Taile, and after to the use of the right heires of B. B. hath the Fee simple in him as well when it is by way of limitation of use, as when it is by Act executed.

ITem, si leas soit fait pur terme d vie, le remaindr a vn auter en le Taile, le remaind ouster a les droit heires le tenant a terme de vie. En cest case si le tenant a terme de vie granta son remainder en fee a auter per son Fait, cel remainder maintenant passa per le fait sans ascun Attournment, &c Car si ascun doit attorne en ceste case, ceo serroit le tenant a terme de vie, et en vain serroit que il atturneroit sur s grant demesne, &c.

ALso if a Lease be made for life, the remainder to another in taile, the remainder over to the right heirs of the Tenant for life: In this case if the Tenant for life grant his Remainder in fee to another by his Deed, this Remainder maintenant passeth by the Deede without any Attornement, &c. for that if any ought to attourne in this case, it should be the Tenant for life, and in vaine it were that he should attorne upon his own Grant, &c.

sup. 54. b.

Vid. Sect. 194. 273.

¶ *En vaine serroit, &c.* Quod vanum & inutilie est Lex non requirit. Lex est ratio summa, quæ iubet quæ sunt vtilia & necessaria, & contraria prohibet; and arguments drawn from hence are forcible in Law.

Sect. 579.

ITem, si soit Seignior et tenant, et le Tenant tient del Seignior per certaine rent, et seruice de chiualer, si le Sr̃ granta les seruices de son teñt p̃ fine, les seruices sont maintenant en le grantee per force del fine, mes vncore le Sr̃ ne poit pas distreyne p̃ ascun parcel de les seruices sans attournment: Mes si le tenant deuia (son heire deins age) le Sr̃ auera le gard del corps

ALso if there be Lord and Tenant, and the Tenant holdeth of the Lord by certaine Rent and Knights service, if the Lord grant the services of his Tenant by fine, the services are presently in the Grantee by force of the Fine: but yet the Lord may not distreine for any parcell of the services, without Attornement. But if the Tenant dieth, his heire within age, the Lord shall have the wardship

corps del heire, et de ſes terres, &c. coment que il ne vnq̄ attur-naſt, pur ceo que le Seigniorie fuit en le grantee, maintenant p force d̄l fine. Et auxy en tiel cas, ſi le tenaut morust ſans heire, le Seignior auera les tenem̄ts per voy deſcheat.

of the bodie of the heire, and of his lād̄s, &c. albeit he never attorned, becauſe that the Seigniorie was in the Grantee preſently by force of the Fine. And alſo in ſuch caſe if the Tenant die without Heire, the Lord ſhall have the Tenancie by way of Eſcheat.

HEre Littleton beginneth to ſhew what aduantages the Conuſée of a Fine may take before Attornement, and what not.

(h) First, he cannot diſtraine becauſe an Auowrie is in lieu of an Action, and thereunto priuitie is requiſit. So likewiſe, and for the ſame cauſe he can haue no Action of Waſte, nor Writ of Entrie, ad Communem legem, or in conſimili caſu, or in caſu prouiſo, writ of Cuſtomes and Seruices, nor Writ of Ward, &c.

(h) 8.E.3.44. 26.E.3 63. 10.H.6.16. 34.H.6.7. 12.E.4.4. 40.E.3.7. 5.H.5.12. 48.E.3.15.b. 3.E.2.Droit.33.

But if a man make a Leaſe for years, and grant the reuerſion by fine if the Leſſée be ouſted, and the Conuſée diſſeiſed, the Conuſée without Attornment ſhall maintaine an aſſiſe, for this Writ is maintained againſt a ſtranger, where there nēdeth no priuitie. And ſuch things as the Lord may ſeiſe or enter into without ſuing any Action, there the Conuſée before any Attornement may take benefit thereof, as to ſeiſe a Ward or Heriot, or to enter into the lands or tenements of a Ward, or eſcheated to him, or to enter for an alienation of Tenant for life or yeares, or of Tenant by Statute Merchant, Staple, or Elegit, to his diſheriſon.

Sect. 580, 581, 582.

CEn meſme le manner eſt, ſi hōe granta le reuerſion de ſon tenant a terme de vie a vn auſ per fine, le reuerſion paſſa maintenant al Grantee per force d̄l fine, mes le grantee iammes naūa Action de Waſt ſans atturnment, &c.

IN the ſame manner it is, if a man grant the reverſion of his tenant for life, to another by fine, the reverſion maintenant paſſeth to the grantee by force of the fine, but the Grantee ſhall never have an Action of waſt without Attornment, &c.

Sect. 581.

CMes vncore ſi le Tenant a terme de vie alienaſt en fee, le grantee poit enter, &c. pur ceo que l reuerſion fuit en luy per force del Fine, et tiel alienation fuit a ſon diſheritance.

BUt yet if the tenāt for life alieneth in fee, the Grantee may enter, &c. becauſe the Reverſion was in him by force of the fine, and ſuch Alienation was to his diſheritance.

CIt is ſaid in our bookes, That if Tenant for life hath a priuiledge not to be impeachable of Waſte, or any other priuiledge, if hée doth attorne without ſauing his priuiledge, that hee hath loſt it, which is ſo to be vnderſtood, where he attornes in a Quid iuris clamat brought by the Conuſée of a fine, that if hee claimeth not his Priuiledge, but attorne generally, his Priuiledge is loſt, for that the Writ ſuppoſeth him to be but a bare Tenant for life, and by his generall Attornement according to the Writ he is barred for euer to claime any priuiledge but a bare Eſtate for life. But if vpon a grant of the reuerſion by deed, the Tenant for life doth Attorne, he loſeth no priuiledge, for there can be no concluſion or barre by the Attornement in pais: and ſo it is of an Attornement in Law, As if the Leſſor diſſeiſe the Leſſée for life, and make a Feoffement in fée, and the Leſſée re-enter, this is an attornment in law, which ſhall not preiudice him

40.E.3.7. 43.E.3.5. 48.E.3.32. 45.E.3.6. 21.E.3.48. 24.E.3.32. 39.H.6.25. F.N.B.136.b

of any priuiledge: so it is if the Lessor leuie a Fine of the reuersion, and the Conusee die without heire, whereby the Reuersion escheateth, in this case the Law doth supply an Attornement, and therefore the Lessee shall lose no priuiledge. But in the Quid iuris clamat, if the Lessee shew his estate and his priuiledge, and is ready, sauing to him his priuiledge, &c. to attorne, hereby either his priuiledge shall bee allowed and entred of record, or he shall not be compelled to attorne: (b) and if the plaintife bee within age, so as he cannot acknowledge the priuiledge, the Tenant shal not be compelled to attorne vntill his full age, when he may acknowledge it. But otherwise it is (as some hold) if a Quid iuris clamat be brought by Baron and Feme, the priuiledge shall be entred into the Rolle notwithstanding shee is a Feme Couert. And in a Per quæ seruicia brought by the Conusee of the Mesne the Tenant may shew that he held by homage Auncestrell, and sauing to him his Warrant and acquitall, he is readie to attorne. In the same manner, if the Tenant hath any other acquitall, and the Mesne leuie a Fine to one for life, the remainder to another in Fee, the Tenant for life bringeth a Per quæ seruicia, and the Tenant is ready to attorne, sauing his acquitall, & the Plaintife acknowledgeth it, and thereupon the Tenant attorne, Tenant for life dieth, in this case albeit regularly the Attornement to the Tenant for life is an Attornement to him in the Remainder, yet in this case hee in the remainder shall not distrains, till he hath acknowledged the acquitall, which must be in a Per quæ seruicia brought by him against the Tenant.

(b)43.E.3.5.

45.E.3.11.a.Vet.N.B.in Per quæ seruicia.5.E.3. Mesne 56.& Per quæ seruicia 16. 37.H.6.33. 39.H.6.25. 18.E.4.7.

Vid.Sect.557.

Sect.582.

¶ MEs en cē cas lou le Sñr granta l's seruices ō son Tenant per fine, si Tenant deuie (son heire esteant de plein age) le Grantee per l' fine nauera reliefe, ne vnques distreinera pur reliefe, sinon que il auont lattornement del Tenaunt que mozust, car ō tiel chose que gīt en distresse, sur q̄ le Bre ō repleuin est sue, &c. home doit & couient dauower l' priselboñ et droiturel, &c. et la couient estre attornement del Tenant, coment que le graunt de tiel chose soit per fine, mes dauer le gard ō les terres ou tenemts issint tenus durant le nonage heire, ou ō eux auer per voy descheat, la ne besoigne ascun distresse, &c. mes vn entrie en la terre per force de le droit del seigniozie q̄ le grantee ad per force del Fine, &c. Sic vide diuersitatem.

BUt in this case where the Lord granteth the services of his Tenant by fine, if the Tenant die (his heire being of ful age) the grantee by the fine shall not have reliefe, nor shal ever distreine for reliefe, unlesse that hee hath the Attornement of the Tenant that dieth: for of such a thing which lieth in Distresse, whereupon the Writ of Replevin is sued, &c. a man must and ought to avow the taking good & rightful, &c. & there ought to be an attornment of the tenāt, although the graunt of such a thing be by fine: but to have the wardship of the lands or tenemēts so holden during the nonage of the heire, or to have thē by way of escheat, there needs no distresse, &c. but an entrie into the land by force of the right of the Seigniorie, which the Grauntee hath by force of the fine, &c. *Sic vide diuersitatē, &c.*

¶ *Alien en fee, &c.* Of this sufficient hath beene said in the next precedent Section.

¶ *Nauera reliefe, &c.* Of this sufficient hath beene said in the next precedent Section.

Sect.

Sect.583.

CItem, si ſoit Seignior, meſne & tenant, & le meſne graunta per fine les ſeruices de ſon tenant a vn auter in fee, et puis le grantee morust ſans heire, ore les ſeruices del meſnaltie deuiendront & eſcheate al Seignior Paramont per voy deſcheat, & ſi apres les ſeruices del meſnaltie ſont aderere, en ceſt cas celuy que fuit Seignior Paramont poit diſtreiner le tenant, nient obſtant que le tenant ne vnques atturnaſt, et le cauſe eſt, pur ceo que le meſnaltie fuit en fait en le grantee per force de le dit fine, & le Seignior Paramont puiſſoit auower ſur le grantee, pur ceo que il fuit ſon tenant en fait, coment que il ne ſerroit a ceo compelle, &c. Mes ſi le grantor en ceſt caſe deuiaſt ſans heire en la vie le grantee, donque il ſerroit compelle dauower ſur le grantee, et aury entant que le Seigniour Paramont ne claime le meſnaltie per force del graunt fait per fine leuie per le meſne, mes per vertue de ſon Seigniorie Paramont, s. per voy deſcheat, il auowa ſur le tenant pur les ſeruices que le meſne auoit, &c. coment que le tenant ne vnques atturna pas.

ALſo if there bee Lord, Meſne and Tenant, and the Meſne grant by fine the ſervices of his Tenant to another in fee, and after the grantee dy without heire, now the ſervices of the meſnaltie ſhall come and eſcheat to the Lord Paramount by way of eſcheate; and if afterwards the ſervices of the Meſnaltie bee behind; in this caſe hee which was Lord Paramount may diſtreine the tenant, notwithſtanding that the Tenant did never attorne, and the cauſe is, for that the Meſnaltie was in Deed in the Grantee by force of the ſaid fine, and the Lord paramont may avow upon the Grantee becauſe in deed hee was his Tenant, albeit he ſhall not be compelled to this, &c. But if the grantor in this caſe had died without heire in the life of the Grantee, then he ſhould bee compelled to avow upon the Grantee & alſo in as muchas the lord Paramont doth not claime the Meſnaltie by force of the grant made by fine levied by the Meſne, but by vertue of his Seigniorie Paramont, *viz.* by way of eſcheat, hee ſhall avow upon the tenant for the ſervices which the meſne had, &c. albeit that the Tenant did never attorne.

CHere Littleton putteth a Caſe where one that claimeth vnder a Conuſee by fine may diſtraine or maintaine any Action, albeit there was neuer any Attornement made to the Conuſee or to him that hath his eſtate. 45.E.3.2. 34.H.6.7. 37.H.6.38. 39 H 6.32. 5.H.7.18.per Curiam.

And here is a diverſitie betweene an act in Law that giueth one Inheritance in lieu of another, and an act in Law that conueyeth the eſtate of the Conuſee onely. Of the former Littleton here putteth an example of the eſcheate of the Meſnaltie which drowneth the Seigniorie Paramont, and therefore reaſon would that the Lord by this act in Law ſhould haue as much benefit of the Meſnaltie eſcheated, as he had of the Seigniorie that is drowned, and the rather for that the Law caſteth it vpon him, and he hath no remedy to compell the Tenant to Lib.6.fol.68. Sir Moyle Finches caſe.

attorne. Another reason hereof Littleton here yeelds, because the Lord commeth to the mesnaltie by a Seigniorie Paramount, & therefore there needeth no Attornement. (e) As if Lesse for life be of a Mannor, & he surrender his estate to the Lessor, there needeth no attornment of the Tenants, because the Lessor is in by a title Paramount. But if the Conusee dieth, and the Law casteth his Seigniorie upon his heire by discent, he shall not be in any better estate than his Ancestor was, because he claimeth as heire merely by the Conusee.

(e) Temps E. 2. Attorn. 18. 39. H. 6. 38. per Prisot.

So it is (as hath beene said) if the Conusee of a fine before Attornement bargaineth and selleth the Seigniorie by Deed indented and inrolled, the Bargainee shall not distraine because the Bargainor, from whom the Seigniorie moueth, had neuer actuall possession.

Sir Moyle Finches case, vbi supra.

So and for the same reason if a reuersion be granted by fine, and the Conusee before Attornement disseise the Tenant for life and make a feoffment in fee, and the Lessee re-enter, the feoffee shall not distraine.

Sect. 584.

HEre Littleton expresseth two diuersities, first betweene an act in law, & the grant of the party. This case is put of an (d) escheat, which is a meere act in Law, but so it is when it is partly by Act in Law and partly by the Act of the party, as if the Conusee of a Statute Merchant extendeth a Seigniorie or rent, hee shall distraine without any Attornement. If a man make a Lease for life or yeares, and after deuise a fine to A. to the vse of B. & his heires, B. shall distraine and haue an action of waste albeit the Conusee neuer had any Attornement, because the reuersion is vested in him by force of the Statute, and hath no remedy to compell the Lessee to attorne.

(d) 45. E. 3. 2. 34. H. 6. 7. 5. H. 7. 18. per Curiam.

13. H. 4. auowrie 237.

Lib. 6. fol. 68. in Sir Moyle Finches case.

27. H. 8. cap. 16.

And so it is of a bargaine and sale by Deed indented and inrolled, but this is by force of a Statute since Littleton wrote.

CEn meisme le maner est, lou le reuersion dun tenant a terme de vie soit grant per fine a vn auter en fee, & le grantee apres mozust sans heire, ozre le Seignioz ad le reuersion p voy descheat. Et si apres le tenant fait waste, le Seignioz auera briefe de Wast enuers luy, nient contrestant que il ne vnques attorna, Cause que supra. Mes lou vn home claime per force del graunt fait per le fine, s. come heire, ou com assignee, &c. la il ne distreinera ne auowera, ne auera action de Wast, &c. sans Attornement.

IN the same manner it is, where the reversion of a Tenant for life is granted by fine to another in fee, and the grātee afterwards dieth without heire, now the Lord hath the reversion by way of escheat, and if after the Tenant maketh waste, the Lord shall have a writ of Waste against him, notwithstanding that he never attorned, *Causa qua supra*. But where a man claimeth by force of the grant made by the fine .s. as heire or as assignee, &c. there hee shall not distraine nor avowe, nor have an action of waste, &c. without Attornement.

Secondly, where he that commeth in by Act in Law is in the per, as the heire of the Conusee, who setteth in his Ancestors seat, Tanquam pars antecessoris de sanguine, and the Lord by escheat, which is an estranger, and commeth in merely in the Post.

Sect. 585.

CItem, en ancient Bozoughs & Cities, lou terres & tenements

ALso in ancient Boroughs and Cities, where Lands and Te-

ments

ments deins meſme les boroughes et Cities ſont deuiſable per teſtament per cuſtome et vſe, &c. ſi en tiel borough ou citie hõe ſoit ſeiſie de rent ſeruice, ou de rent charge, et deuiſa cel rent ou ſeruice a vn auter per ſon teſtament et morust, en ceſt cas celuy a que tiel deuiſe eſt fait, poit diſtreiner le tenant pur le rent ou ſeruice aderere, coment que le tenant nattorna pas.

nements within the ſame Boroughes and Cities are deviſable by teſtament by cuſtome and uſe, &c. if in ſuch Borough or Citie a man be ſeiſed of a rent ſeruice, or of a rent-charge, and deviſeth ſuch rent or ſervice to another by his teſtament & dieth, In this caſe he to whom ſuch deviſe is made may diſtreine the tenant for the rent or ſervice arere, although the tenant did never attorne.

HEre doth Littleton put a caſe where a man may haue a Seigniory, Rent, Reuerſion or remainder merely by the act of the party and may diſtraine, and haue any action without any Attornement, and that is by deuiſe of lands deuiſable by cuſtome when Littleton wrote by the laſt Will and Teſtament of the owner. 34.H.6.6. 5.H.7.18. 19.H.6.24. 21.H.6.38.a F.N.B.121.n.

Sect.586.

EN meſme le maner eſt lou home leſſa tiels tenements deuiſables a vn auter pur terme de vie, ou pur terme dans, et deuiſa le reuerſion per ſon teſtamẽt a vn auter en fee, ou en fee taile et morust, et puis le tenant fait Waſte, celuy a que le deuiſe fuit fait auera briefe de Waſte, coment que le tenant ne vnque attorna. Et la cauſe eſt pur ceo, que la volunt le deuiſour fait per ſon teſtament ſerra performe ſolonque lentent del deuiſour, et ſi leffect de ceo girroit ſur lattournement del tenant, donques per caſe le tenant ne voyle vnques atturner, et donques le volunt del deuiſor ne ſerroit vnque performe, &c. et pur ceo le deuiſee diſtreinera, &c. ou auera action de Waſte, &c. ſans attourñment. Car ſi home deuiſa tiels tenements a vn auter per ſon teſtament, Habend' ſibi imperpetuum, & morust, et le deuiſee enter, il ad fee ſimple,

IN the ſame manner is it, where a man letteth ſuch tenements deviſable to another for life, or for yeares, and deviſeth the reverſion by his Teſtament to another in fee, or in fee taile, and dyeth, and after the Tenant commits waſte, he to whom the deviſe was made ſhall have a writ of waſte, although the Tenant doth never attorne. And the reaſon is for that the will of the Deviſor made by his Teſtament ſhall be performed according to the intent of the Deviſor, and if the effect of this ſhould lye vpon the Attornement of the tenant, then perchance the Tenant would never attorne, and then the will of the deviſor ſhould never be performed, &c. and for this the deviſee ſhall diſtraine, &c. or he ſhall have an action of waſt, &c. without attornement. For if a man deviſeth ſuch tenements to another by his teſtament, *Habend' ſibi imperpetuum*, & dieth, & the de-

pie, Cauſa qua ſupra, vncore ſi fait de feoffment vſt eſtre fait a luy per le deuiſor en ſa vie de meſmes les tenements, Habend' ſibi imperpetuum, et liuery de ſeiſin ſur ceo fuit fait, il naueroit eſtate forſque pur terme de ſa vie.

viſee enter, hee hath a fee ſimple, *Cauſa qua ſupra*, yet if a deed of feoffment had beene made to him by the deviſor of the ſame tenements, *Habend' ſibi imperpetuum*, & livery of ſeiſin were made, upon this hee ſhould have an eſtate but for terme of his life.

¶ Both this and the precedent caſe ſtand vpon one and the ſame reaſon which Littleton here yeeldeth, viz. becauſe that the will of the Deuiſor expreſſed by his Teſtament ſhall be perfourmed according to the intent of the Deuiſor, and it ſhall not lie in the power of the Tenant or Leſſee to fruſtrate the will of the deuiſor by denying his attornment. Here Littleton mentioneth a maxime of the Common Law, viz. Quod vltima voluntas teſtatoris eſt perimplenda ſecundum veram intentionem ſuam, and reipublicæ intereſt ſuprema hominum teſtamenta rata haberi.

Max.

Vide Sect.167.
Bracton li.11.f.12.& f.60.
Fleta lib.2.cap.15.
Britton fo.78.& f.212.b.

¶ *Teſtament.* Teſtamentum, i. teſtatio mentis, which is made nullo præſentis metu periculi, ſed ſola cogitatione mortalitatis. Omne teſtamentum morte conſummatum.

¶ *Car ſi home deuiſa tiels tenements a vn auter, &c.* Here Littleton putteth a caſe where the intent of the Teſtator ſhall be taken, viz. where a man by deuiſe ſhall haue a fée ſimple without theſe words heirs, and here Littleton putteth the diuerſity betweene a will and a feoffment.

22.E.3.16.34.H.6.7.
15.H.7.12. 19.H.8.4.

Now by the Statutes of 32. and 34.H.8. (as hath beene ſaid in the chapter of Burgage) Lands, Tenements and Hereditaments are deuiſable, as by the ſaid Acts doe appeare.

Vide Sect.167.

Sect.587.

¶ Item, ſi hom̃ ſeiſie dun manor qui eſt parcel en demeſn et parcel en ſeruice, et ent ſoit diſſeiſie, mes les tenants que teignont del manor ne vnqs attournant a le Diſſeiſor, en ceſt cas coment que le Diſſeiſor morust ſeiſie et ſon heire ſoit eins per diſcent, &c. vncore poit le Diſſeiſee diſtreine pur le rent arere, et auera les ſeruices, &c. Mes ſi les tenants viendront al Diſſeiſor, et diont, nous deueignomus voſtre tenants, &c. ou auter attournement a luy feſoyent, &c. et puis le Diſſeiſor morust ſeiſie, donque le Diſſeiſee ne poit diſtreine pur le rent, &c. pur ceo que tout le manor diſcendit al heire le Diſſeiſor, &c.

ALſo if a man bee ſeiſed of a mannor which is parcell in demeſne and parcel in ſervice, and is thereof diſſeiſed, but the tenants which hold of the mannor doe never attorne to the Diſſeiſor: In this caſe albeit the Diſſeiſor dieth ſeiſed, and his heire is in by diſcent, &c. yet may the Diſſeiſee diſtraine for the rent behinde, and have the ſervices, &c. but if the tenants come to the Diſſeiſor and ſay, We become your tenants, &c. or make to him ſome other attornement, &c. and after the Diſſeiſor dieth ſeiſed, then the Diſſeiſee cannot diſtraine for the rent, &c. for that all the Mannor deſcendeth to the heire of the diſſeiſor, &c.

¶ Littleton having ſpoken of eſtates gained by lawfull conueiances, doth now ſpeake of eſtates gained by wrong. And here putteth a caſe of a diſſeiſin of a Mannor, where it appeareth, that the Diſſeiſor cannot diſſeiſe the Lord of the rents or ſeruices without the

the Attornement of the Tenants to the Disseisor, for seeing an Attornement is requisite to a feoffment and other lawfull conueyances, a fortiori, a Disseisor or other wrong doer shall not gaine them without Attornment. The like law is of an Abator and an Intrudor. But albeit the Disseisor hath once gotten the Attornement of the Tenants and payment of their rents, yet may they refuse afterwards, for auoiding of their double charge. And here the Attornment of the Tenant of a Mannor to a Disseisor of the demeanes shall dispossesse the Lord of the rents and seruices parcell of the Mannor, because both demeanes, rents and seruices make but one entire Mannor, and the demeanes are the principall: but otherwise it is of rents and seruices in grosse, as in this next Section our Author teacheth vs.

Sect. 588,589.

¶ MEs si vn tient de moy per rent seruice, le quel est vn seruice en grosse, et nient p reason de mon mannor, et vn auter que nul droit ad, claima le rent, et receiue et prent mesme le rent de mon tenant per coherson de distres, ou per auter forme, et disseisist moy per tiel prender de rent, coment que tiel disseisor morust issint seisie en pernant de rent, vncore apres sa mort ieo puissoy bien distreiner le tenant pur le rent que fuit aderere deuant le decease del disseisor, et aury apres son decease. Et la cause est, pur ceo que tiel disseisor nest pas mon Disseisor forsque a ma election et ma volunt. Car coment que il prent le rent de mon tenant, &c. vncore ieo puissoy a touts foits distreiner mon tenant pur le rent arere, issint que il est a moy forsque sicome ieo voile susterer le tenant, estre per tant de temps arere p̄ paier a moy m̄ le rent, &c.

BUt if one holdeth of mee by rent service, which is a seruice in grosse, and not by reason of my Mannor, and another that hath no right, claimeth the rent, & receiues & taketh the same rent of my tenāt by coertion of distresse, or by other forme, and disseiseth mee by such taking of the rent. Albeit such Disseisor dieth so seised in taking of the rent, yet after his death I may well distreine the tenant for the rent which was behinde before the decease of the Disseisor, and also after his decease. And the cause is, for that such Disseisor is not my disseisor but at my election and will. For albeit he taketh the rent of my tenant, &c. yet I may at all times distreine my tenant for the rent behinde, so as it is to mee but as if I will suffer the tenant to bee so long time behinde in payment of the same rent unto me, &c. *1 Ao 303* *By. 176. 38* *1 Ro 662* *Ho. 322*

Sect. 589.

¶ CAr le payment de mon tenant a vn auter, a que il ne doit pas payer, nest pas disseisin a moy, ne ousta moy pas de mon rent sans ma volunt et ma election, &c. Car coment que ieo puissoy auer Assise enuers tiel Pernor

FOr the payment of my Tenant to another to whom hee ought not to pay, is no disseisin to me, nor shall oust me of my rent, without my will and election, &c. For although I may have an assise against such Pernor, yet this is at my ele- *PK 98. 1 Ro. 659*

nor vncore ceo eſt a mon election, ſi ieo voile prender luy come mon diſſeiſor ou non. Iſſint tiels diſcents de rents en gros, ne ouſteront pas le ſeignior de diſtreyner, mes a cheſcun temps ils poyent bien diſtreyner pur l' rent arere, &c. Et en ceſt caſe ſi apres le diſtreſſe de luy que iſſint tortiouſment prist le rent, ieo graunt per mon fait le ſeruice a vn auter, et le tenant attourna, ceo eſt aſſetts bone, et les ſeruices per tiel graunt et attornement maintenant ſont en le Grantee, &c. Mes auterment eſt, lou le rent eſt parcel del Manor, et le diſſeiſor morust ſeiſie del Manor entire, come en le caſe procheine auant eſt dit, &c.

ction, whether I will take him as my Diſſeiſor, or no. So ſuch diſcents of Rents in groſſe ſhall not ouſt the Lord of his Diſtreſſe, but at any time he may well diſtreine for the Rent behinde, &c. And in this caſe if after the diſtreſſe of him which ſo wrongfully tooke the Rent, I grant by my Deed the ſervice to another, and the Tenant attorne, this is good enough, and the ſervices by ſuch Grant and Attornement are preſently in the Grantee, &c. But otherwiſe it is where the Rent is parcell of a Mannor, and the Diſſeiſour dieth ſeiſed of the whole Mannor, as in the caſe next before is ſaid, &c.

¶ HEre Littleton putteth a diuerſitie betweene a Rent ſeruice parcel of a Mannor, whereof he had ſpoken before, and a Rent ſeruice in Groſſe. For a man cannot be diſſeiſed of a Rent ſeruice in Groſſe, Rent charge, or Rent ſeeke by Attornement or payment of the Rent to a ſtranger, but at his Election, for the rule of Lawis, Nemo redditum alterius inuito Domino percipere aut poſſidere poteſt; and our Author hath before* taught vs, what be Diſſeiſins of Rents ſeruices, Rents charges, and Rents ſeeks, and payment to a ſtranger is none of them, but at the Lords election, as our Author here ſaith.

* Vid Sect. 237, 238, 239, 240.

¶ *Pernor.* i. The taker of my rent. But if the diſſeiſee bring an Aſſiſe againſt ſuch a Pernor, then he doth admit himſelfe out of poſſeſſion.

24.E.3.4. 1.E.5.5. See the Authorities there following in the next Paraffe.

¶ *Diſcents.* A diſcent of a rent in groſſe bindeth not the right owner but that he may diſtraine, albeit hee admitted himſelfe out of poſſeſſion, and determined his election, as by bringing of an Aſſiſe, &c.

5.E.4.1. 23.H.3.tit.Aſſ. 439.

24.E.3.40.34.16.Aſſ. p.15.

16.E.3.Releaſe 56. 1.E.5.

If the Tenant of the land pay the Rent to a ſtranger which hath no right thereunto, and the right owner releaſe to him, this releaſe is good because he hereby admitted himſelfe to be out of poſſeſſion. But if the Tenant had giuen him any thing in name of Attornement, and the right owner had releaſed to him, this Releaſe had beene void, because an Attornement onely can be no diſſeiſin of the Rent.

5.F.N.B.179.E.15.E.4.8. Elect.li 4.ca.12.

¶ *Ieo grant per mon fait, &c.* This alſo proueth, that the right owner is not out of poſſeſſion, and that this grant ouer is a demonſtration of his election that hee is in poſſeſſion.

Sect.590.

¶ ITem, ſi ieo ſue ſeiſie dun manor parcel en demeſn, et parcel en ſeruice, et ieo done certaine acres del terre, parcel de demeſne demeſme l' manor a vn auter

ALſo if I be ſeiſed of a Manor, parcell in Demeſne, and parcell in Service, and I give certaine acres of the land, parcell of the Demeſne of the ſame Mannor, to

auter en le taile, rendant a moy et a mes heires vn certaine rent, &c. Si en ceſt caſe ieo ſue diſſeiſie de la Manor, et touts les tenants atturnont et payont lour rents al diſſeiſor, et aury le dit tenant en le taile paya le rent per moy reſerue al Diſſeiſor, et puis le diſſeiſor mozuſt ſeiſie, &c. et ſon heire entra, et eſt eins p diſcent, vncoze en ceſt caſe ieo puiſſe bien diſtreigner le Tenant en le taile, et ſes heires, pur le rent p moy reſerue ſur le done, ſ, aury bien pur le rent eſteant aderere deuant le diſcent al heire le Diſſeiſor, et aury pur le tẽt que happa deſtre aderere apres meſme le diſcent, nient obſtant tiel mozant ſeiſi del diſſeiſor, &c. Et la cauſe é, pur ceo que quant home dona tenements en le taile, ſauant le reuerſion a luy, et il ſur le dit done reſerua a luy vn Rent ou auters ſeruices, tout le rent et les ſeruices ſont incidents a la reuerſion, et quant vn home ad vn reuerſion, il ne puiſſoit eſtre ouſte ô ſon reuerſion per le fait dun eſtrange home, ſinon que le tenant ſoit ouſte de ſon eſtate et poſſeſſion, &c. car cy longement que le Tenant en le Taile & ſes heires continuont lour poſſeſſion p force de mon done, cy longement eſt le reuerſion en moy et en mes hẽs, et entant que le rent et les ſeruices reſerues ſur tiel done ſont incidents et dependants al reuerſion, quecunque que ad le reuerſion, auera meſme le Rent et Seruices, &c.

another in Taile, yeelding to mee and to my Heires a certaine Rent, &c. if in this caſe I be diſſeiſed of the Mannor, and all the Tenants attorne and pay their rents to the Diſſeiſor, and alſo the ſaid Tenant in Taile pay the Rent by me reſerved, to the Diſſeiſor, and after the Diſſeiſor dieth ſeiſed, &c. and his heire enter and is in by Diſcent, yet in this caſe I may well diſtraine the Tenant in taile and his heires, for the rent by me reſerved upon the Gift, *ſcz.* as well for the Rent being behind before the diſcent to the heire of the Diſſeiſor, as alſo for the rent which happeth to be behind after the ſame diſcẽt, notwithſtanding ſuch dying ſeiſed of the Diſſeiſor, &c. And the reaſon is, for that when a man giveth lands in Taile, ſaving the reverſion to himſelfe, and hee upon the ſaid gift reſerveth to himſelfe a Rent or other ſervices, all the rent and Services are incident to the Reverſion, and when a man hath a Reverſion hee cannot be ouſted of his Reverſion by the act of a Stranger, unleſſe that the Tenant be ouſted of his eſtate and poſſeſſion, &c. For as long as the Tenant in taile and his Heires continue their poſſeſſion by force of my gift, ſo long is the reverſion in me and in my Heires: and in as much as the rent and ſervices reſerved upon ſuch gift, be incident and depending upon the reverſion, whoſoever hath the Reverſion, ſhall have the ſame Rent and Seruices, &c.

Sect.

Sect.591.

By.99 b.

CEm̃e meſme le manner eſt, lou ieo leſſa parcel del demeſne del manoꝛ a vn auter pur terme de vie, ou p̃ terme dans, rendant a moy certaine rent, &c. coment que ieo ſoy diſſeiſie del manoꝛ, &c. et le diſſeiſoꝛ moꝛuſt ſeiſie, &c. et ſon heiꝛ eſteant eins per diſcent, vncoꝛe ieo diſtreiner pur le rent arere vt ſupra, nient obſtant tiel diſcent. Car quant home ad fait tiel done en taile, ou tiel leas pur terme de vie, ou pur terme dans del parcel de le demeſne de vn mannoꝛ, &c. ſauant le reuerſion a tiel donour ou leſſour, &c. et puis il ſoit diſſeiſie de le manoꝛ, &c. tiel reuerſion apꝛes tiel diſſeiſin eſt ſeuer del manoꝛ en fait, coment que ne ſoit ſeuer en dꝛoit. Et iſſint poyes veier (mon fits) diuerſitie, lou il y ad vn Manoꝛ parcel en demeſne & parcel en ſeruices, les queux ſeruices ſont parcel de meſme le manoꝛ nient incidents a aſcun reuerſion, &c. & lou ils ſont incidents al reuerſion, &c.

IN the ſame maner is it, where I let parcel of the demeſnes of the Mannor to another for terme of life or for terme of yeares, rendring to mee a certaine rent, &c. albeit I be diſſeiſed of the manor, &c. and the diſſeiſor die ſeiſed, &c. and his heire be in by diſcent, yet I may diſtreine for the rent arere *vt ſupra*, notwithſtanding ſuch diſcent, for when a man hath made ſuch a gift in taile, or ſuch a leaſe for life or for yeares of parcell of the demeſnes of a mannor, &c. ſaving the reverſion to ſuch donor or leſſor, &c. And after he is diſſeiſed of the mannor, &c. ſuch reverſion after ſuch diſſeiſin is ſevered from the mannor in deed, though it be not ſevered in right. And ſo thou maiſt ſee (my ſonne) a diverſitie, where there is a Mannor parcell in Demeſne and parcell in Services, which Services are parcell of the ſame Mannor not incident to any Reverſion, &c. And where they are incident to the Reverſion, &c.

By 302. 43

CHere Littleton putteth a diuerſitie betweene Rents and Seruices parcell of a Mannoꝛ (whereof he had ſpoken betoꝛe) and Rents and Seruices incident to a Reuerſion parcell of a Mannoꝛ.

And the reaſon of this diuerſitie is foꝛ that as long as the Donée in taile, Leſſée foꝛ life, oꝛ Leſſée foꝛ yeares, are in poſſeſſion, they pꝛeſerue the Reuerſion in the Donoꝛ oꝛ Leſſoꝛ: and ſo long as the Reuerſion continue in the Donoꝛ oꝛ Leſſoꝛ, ſo long doe the Rents and Seruices which are incident to the Reuerſion belong to the Donoꝛ oꝛ Leſſoꝛ. Neither can the Donoꝛ oꝛ Leſſoꝛ be put out of his reuerſion vnleſſe the Donée oꝛ Leſſée be put out of their poſſeſſion, and if the Donée oꝛ Leſſée be put out of their poſſeſſion, then conſequently is the Donoꝛ oꝛ Leſſoꝛ put out of their Reuerſion. But if the Donée oꝛ Leſſée make a regreſſe and regaine their eſtate and poſſeſſion, thereby doe they ipſo facto reueſt the Reuerſion in the Donoꝛ oꝛ Leſſoꝛ.

(a) 18.Aſſ.p.2. 38.H.6.33. Pl.Com. Fulmerſtones caſe.101. Lib.5.fol.11.12,25. 19.E.2.Breefe 845. 4.E.3.Briefe 713.

And here is to be obſerued that when a man is ſeiſed of a Mannoꝛ, and maketh a gift in taile, oꝛ leaſe foꝛ life, &c. of parcell of the Demeſne of the Mannoꝛ, (a) the Reuerſion is part of the Mannoꝛ, and by the grant of the Mannoꝛ the Reuerſion ſhall paſſe with the Attornement of the Donée oꝛ Leſſée. But if the Loꝛd make a gift in taile, oꝛ a leaſe foꝛ life of the whole Mannoꝛ, excepting blacke Acre parcell of the Demeſnes of the Mannoꝛ, and after hee granteth away his Mannoꝛ, blacke Acre ſhall not paſſe, becauſe during the eſtate taile oꝛ leaſe foꝛ life

like it is seuered from the Mannor. And so note a diuersitie, that a Reuersion of part may be parcell of a Mannor in possession, but a part in possession cannot be parcell of the Reuersion of a Mannor expectant vpon any estate of Freehold. But if a man make a Lease for yeares of a Mannor, excepting blacke Acre, and after granteth away the Mannor, blacke Acre shall passe, because the Freehold being entire, it remaineth parcell of the Mannor, and one Præcipe of the whole Mannor shall serue. But otherwise it is in case of the gift in taile or lease for life excepting any part, there must be seuerall Writs of Præcipe, because the Freehold is seuerall.

† 38. H. 6. 38. Rep. 11. fol. 47.

CHAP. II. Of Discontinuance. *Sect.592.*

Discontinuance est vn ancient parol en la ley, & ad diuers significatiõs, &c. Mes quant a vn entent, il ad tiel signification, s. lou vn home ad alien a vn auter certaine terres ou tenements & morust, et vn auter ad droit de auer meſmes les terres ou tenements, mes il ne poit enter en eux per cause d̃ tiel alienation, &c.

DIscontinuance is an ancient word in the Law, and hath divers significations, &c. But as to one intent it hath this significatiõ, *viz.* where a man hath aliened to another certaine lands or Tenements and dieth, and another hath right to have the same Lands or Tenements, but he may not enter into them because of such an alienation, &c.

Discontinuance is a word compounded of de and continuo, for continuare is to continue without intermission. Now by addition of de (Euphoniæ gratia dis to it,) which is priuatiue, it signifieth an intermission. Discontinuare nihil aliud significat quám intermittere, desuescere, interrumpere. And as our Author saith, (a) it is a very ancient word in Law. Vide Sect.637. (a) 8.H.4.8.b. 11.H.4. 85.b.

A discontinuance of estates in Lands or Tenements is properly (in legall vnderstanding) an alienation made or suffered by Tenant in taile, or by any that is seised in auter droit, whereby the issue in taile, or the heire or Successor, or those in Reuersion or Remainder, are driuen to their Action, and cannot enter.

All which is implied by the description of our Author, and by the (&c.) in the end of this Section.

I haue added (properly) by good warrant of our Author himselfe, for Sectione 470. he vseth Discontinuance for a deuesting or displacing of a Reuersion, though the entrie bee not taken away.

This Discontinuance consisteth in doing or suffering an Act to bee done, as hereafter shall appeare. And where our Author saith, that it hath diuers significations, there is also a Discontinuance of Processe consisting in not doing, where the Processe is not continued, concerning which there is an excellent Statute made in furtherance of Iustice in (b) 1.E.6. and is well expounded in my Reports, and therefore need not here to be inserted. (b) Vide the Statutes of 1.E.6.ca.7. & 31.Eliz.c.1. Lib 7.f.30,31, &c. le case de discontinuance de proces.

There is another erroneous proceeding, and that consisteth in misdoing, as when one Processe is awarded in stead of another, or when a day is giuen which is not legall, this is called a miscontinuance, and if the Tenant or Defendant make default, it is error, but if he appeare, then the miscontinuance is saued, otherwise it is of a Discontinuance. But let vs returne to the Discontinuance of Estates in Lands, whereof Littleton doth entreat in this Chapter. 39.E.3.7.a. 46.E.3.30. 37.H.6.25.26. 9.E.4 18. 12.E.4.

¶ *Significations.* Here (as in many other places) it appeareth how necessary it is to know the signification of words. Vide Sect.74.174.194. 441.520.

And in this Chapter it appeareth, that when Littleton wrote, the estate in Lands, and Tenements might haue beene discontinued fiue manner of wayes, viz. by Feoffment, by Fine, by Release with Warrantie, Confirmation with Warrantie, and by suffering of a Recouery in a

Præcipe quod reddat. And this was to the præiudice of fiue kinds of persons, viz. of Wiues, of Heires, of Successors, of those in Reuersion, and of those in Remainder. But for Wiues, and their Heires, and for Successors the Law is altered by Acts of Parliament since Littleton wrote, as in this Chapter in their proper places shall appeare.

Sect.593.

THere Littleton putteth an example of a Discontinuance made by one seised in auter droit, as by an Abbot who had a fée simple in the right of his Monastery, and therefore his Alienation without the assent of his Couent had béene a Discontinuance at the Common Law, and had driuen his Successor to a Writ De Ingressu sine assensu capituli.

Register. Orig. fol. 230. F.N.B. 195. Bracton li. 4. fol. 323. Fleta lib. 5. ca. 34.

¶ De Ingressu sine assensu Capituli, &c. It is called so because the Alienation was sine assensu capituli, for if it had béene cum assensu capituli, it should haue béene a barre to the Successor. And because the Successor could not enter, the Common Law gaue him this Writ, and is so called of these words contained in the Writ, which Writ you may read in the Register and Fitzherberts N.B.

¶ Si come vn Abbe seisie de certaine terres ou tenements en fee, & alienast meismes les terres ou tenements a vn auter en fee, ou en fee taile, ou pur terme de vie, & puis labbe mourust, son successor ne poit enter en les dits terres ou tenements, coment que il ad droit eux auer come en droit de son meason, mes il est mis a son action de recouerer meismes les terres ou tenements quel est appelle, Breue de ingressu sine assensu capituli, &c.

As if an Abbot be seised of certaine Lands or tenements in fee, & alieneth the same lands or tenements to another in fee or in fee taile or for terme of life, and after the Abbot dieth, his successor cannot enter into the said lands or tenements, albeit he hath right to have the as in right of his house, but he is put to his action to recouer the same Lands or tenements, which is called, *Breue de ingressu sine assensu capituli, &c.*

And here is to bée noted, that in Law the Couent, albeit they be regular and dead persons in Law, yet are they said in Law to be Capitulum to the Abbot, as well as the Deane and Chapiter, that be Secular to the Bishop. But it is to be obserued & implyed in this (&c.) that, a sole body politike that hath the absolute right in them, as an Abbot, Bishop, and the like may make a Discontinuance, but a Corporation aggregate of many, as Deane and Chapiter, Warden and Chaplaines, Master and Fellowes, Maior and Comminaltie, &c. cannot make any Discontinuance, for if they ioyne, the Grant is good, and if the Deane, Warden, Master, or Maior make it alone where the body is aggregate of many, it is void, and worketh a disseisin. But now (as hath béene said) by the Statute of 27 H.8. and 31. H.8. all the Abbots, Priors, and other Religious persons are so dissolued, as there be none remaining this day, and by the Statutes of 1. Eliz. and 13. Eliz. cap. 10, and 1. Iac. cap. 3. Bishops and all other Ecclesiasticall persõs are disabled to alien or discontinue any of their Ecclesiasticall liuings, as by the same Acts doth appeare.

21.E.4.86.

See more of this matter hereafter in this Chapter Sect.648. and before Sect.528.

Sect.594.

¶ EN *droit sa feme, &c.* That is to say, in fée simple, Fée taile,

¶ Item, si home seisie de terre come en droit de

Also if a man be seised of Land as in right of his

de ſa feme, &c. et ent eſteoffa vn auter, &c. & mozuſt, la feme ne puit enter, mes eſt mis a ſon action, le quel eſt appel Cui in vita, &c.

wife, &c. and thereof inſeoffe another, &c. and dieth, the Wife may not enter, but is put to her action, the which is called, *Cui in vita, &c.*

oz foz life. Here Littleton putteth another caſe where a man is ſeiſed in auter droit, and may make a Diſcontinuance, as the husband ſeiſed in the right of his wife, and therefoze the Common Law gaue her a Cui in vita, and her heire a Sur cui in vita, because they could not enter. But this is altered ſince our Authoz wzote, by the Statute of 32. H. 8. by the puruiew of which Statute, the wife and her heires after the deceaſe of her husband may enter into the Lands oz Tenements of the wife, notwithſtanding the alienation of her husband.

Bracton lib. 4. f. 102. & 22 & 324. Fleta lib. 5. ca. 34. & 36. P. N. B. 193 Regiſt. 32. H. 8. cap. 28.

And here is one of the alienations to make a Diſcontinuance, viz. a feoffment, and where our Authoz ſpeaketh of a husband ſeiſed in the right of his wife, ſo it is, where the husband & wife are ioyntly ſeiſed to them and their heires of an eſtate made during the couerture, and the husband make a feoffment in fée, and dieth, the wife now may enter within that Statute, although it was the Inheritance of them both. And ſo it is if the feoffment be made by the husband and wife, (albeit the wozds of the Statute be by the husband onely) foz in ſubſtance this is the act of husband onely.

Dier. 4. & 5. Ph. & Marie. 146. 3. Eliz. Dier 191. Lib 8. fol. 71. 72. Greueleyes caſe.

If the husband cauſe a Præcipe quod reddat vpon a faint title to be bzought againſt him and his wife, and ſuffereth a recouery without any Voucher, and execution to be had againſt him and his wife, yet this is holpen by the Statute, foz this by like conſtructiõ is the act of the husband and the wozds of the Statute be, made, ſuffered, oz done.

Greueleyes caſe vbi ſup.

If the husband make a feoffment in fée of the Lands which he holdeth in the right of his wife, and after they are diuozced Cauſa præcontractus, yet the woman may enter within the puruiew of that Statute, and is not dziuen to her Writ of Cui ante diuortium, as ſhe was at the Common Law, albeit the entrie bee by the Statute giuen to the wife, and now vpon the matter ſhe was neuer his lawfull wife. But it ſufficeth that ſhe was his wife de facto at the time of the alienation, and where her husband dieth thée cannot be his wife at the time of the entrie.

If the husband leuie a fine with Pzoclamations, and dieth, the wife muſt enter oz auoid the Eſtate of the Conuſée within fiue yeares, oz elſe ſhe is barred foz euer by the Statute of 4. H. 7. foz the Statute of 32. H. 8. doth help the Diſcontinuance but not the barre, and the Statute ſpeaketh of a fine and not of a fine with Pzoclamations. / Cart 521

6. E. 6. Dier. 72. b. 4. H. 7 c. 24. ~~Dier 1 &~~

If lands be giuen to the husband and wife, and to the heires of their two bodies, and the husband maketh a feoffment in fée and dieth, the wife is holpen by the ſaid Statute, as hath beene ſaid, & ſo is the iſſue of both their bodies. Fem tenant in taile taketh husband, the husband maketh a feoffment in fée, the wife befoze entrie dieth without iſſue, he in the Reuerſion oz Remainder may enter. Foz firſt the Reuerſion oz Remainder cannot be diſcontinued in this caſe, because the eſtate taile is not diſcontinued. Secondly, the wozds of the Statute be, Shall not be preiudiciall or hurtfull to the wife or her heires, or ſuch as ſhall haue right title or intereſt by the death of ſuch a wife, but that the ſame wife and her heires, and ſuch other to whom ſuch right ſhall appertaine after her deceaſe, ſhall or lawfully may enter into all ſuch Mannors, Lands, &c. according to their rights and titles therein: by which wozds the entrie of him in the Reuerſion oz Remainder in that caſe is pzeſerued. The husband is Tenant in taile, the remainder to the wife in taile, the husband make a feoffment in fée, by this the husband by the Common Law did not only diſcontinue his owne eſtate taile, but his wiues remainder: but at this day after the death of the husband without iſſue, the wife may enter by the ſaid Act of 32. H. 8. If the husband hath iſſue, and maketh a feoffment in fée of his wiues Land, and the wife dieth, the heire of the wife ſhall not enter during the husbands life, neither by the Common law noz by the Statute.

Greueleyes caſe vbi ſupra. Paſch. 7. Iac.

8. E. 2. tit. Cui in vita 2d. 34. E. 1. ibidem 30. 10. E. 3. 12. Dier 21. Eliz. 363.

¶ Cui in vita, &c. Here is alſo implieda Sur cui in vita, alſo foz the heire. This Writ here mentioned in our Authoz is ſo called of thoſe wozds contained in the wzit, which you may reade in the Regiſter and Fitzherberts N. B.

Sect. 595.

¶ *ENfeoffa vn auter, &c.* Here is implied, or make a gift in taile or an estate for life. Here Littleton putteth a third example of a Discontinuance made by Tenant in taile so as his issue is put to his Formedon in the Discender, which is giuen to the issue in taile by the Statute of 13. E.1. cap.1. because he cannot enter.

Fleta lib.5.cap.34. F.N.B.211.212.Registr.

¶ *Tenant en taile.* This extendeth as well to a woman Tenant in taile as to a man and was generally good Law when Littleton wrote, but now by the Statute of (d)11.H.7. if the woman hath any estate in taile ioyntly with her husband, or onely to her selfe or to her vse in any Lands or Hereditaments of the inheritance or purchase of her husband, or giuen to the husband and wife in taile by any of the Ancestors of the husband, or by any other person seised to the vse of the husband or his Ancestors, and shall hereafter being sole or with any other after taken husband discontinue, &c. the same: euery such Discontinuance shall be void, and that it shall be lawfull for euery person to whom the interest, title, or inheritance, after the decease of the said woman should appertaine, to enter, &c. So as if such a feme Tenant in taile doe make any Discontinuance in fee, in taile, or for life, although it be without warrantie, yet this doth not take away the entry after her death, either of the issue or of him in reuersion or remainder. This Statute hath beene excellently expounded by diuers resolutions and iudgements (e) which I haue quoted in the margent, and are worthy of due obseruation.

(d)11.H.7.ca.20. Vide Sect.697.

(e)Lib.3.fol.50.51.Sir George Brownes case eodem lib.fol.60.&c. Linc.Coll.case lib.2. fol.176.Mildemaves case. Dier.3.& 4.Ph.& Mar. 146.idem.8.Eliz.248. 17.Eliz.340. idem 19. Eliz.3 4.idem.20.Eliz. 362. 27 H.8.23.Lib.5. fol.79.Firth.case. Lib.8.fol.71,72. Greneleyes case.

¶ If Lands were entailed to a man and to his wife, and to the heires of their two bodies, and the husband had made a Feoffment in fee and died, and then the wife died, this had beene a discontinuance at the common Law: for the title of the issue is as heire of both their bodies, and not as heire to any one of them, and his entrie must ensue his title or action,

¶ *De formedon.* De forma donationis, so called because the Writ doth comprehend the forme of the gift. And there be three kinds of Writs of Formedon, viz. The first in the Discender to be brought by the issue in taile, which claime by discent Per formam doni. The second is in the Reuerter, which lieth for him in the reuersion or his heires or Assignes after the state taile be spent. The third is in the Remainder, which the law giueth to him in the remainder, his heires or Assignes after the determination of the estate taile, of all which you may read in the Register and F.N.B.

Here Littleton sheweth that the issue in taile shall haue a Formedon in the Discender. What other actions Tenant in taile may haue, and not haue, is good to be seene.

(a) Tenant in taile shall haue a Quod permittat.

(b) Tenant in taile shall haue a Writ of Customes and Seruices In le debet, & solet, but shall not haue it in the Debet onely,

(c) In like manner he shall haue a Secta ad molendinum in le debet & solet, but not in the Debet tantum.

(d) Tenant in taile shall haue a Writ of Entre in consimili casu and an Admeasurement, and a Natiuo habendo, Cessauit, Eschear, Waste, and the like.

(e) But tenant in taile shall not haue a Writ of Right Sur disclaymer, nor a Quo iure, nor a Ne iniuste vexes, nor a Nuper obiit or Rationabile parte, nor a Mordancester, nor a Sur cui in vita, for these and the like none but Tenant in fee shall haue: and the highest Writ that a Tenant in taile can haue is a Formedon.

(a) 4.E.3.38. 43.E.3.25. 4.E.4.25.F.N.B.124.
(b) 2.E.2.Droit 28.
(c)F.N.B.123.

(d)21.E.3.11. 5.E.3.23. 11.H.4.49.

(e)2.E.3,Droit.28. 23.H.7.24. 5.E.4.2. 20.E.3.Auowrie 131. F.N.B.10.46.E.3.tit. Cui in vita 33.

ALso if tenant in taile of certaine land, thereof enfeoffe another, &c. and hath issue & dieth, his issue may not enter into the land albeit he hath title and right to this, but is put to his action which is called a *Formedon in le discender, &c.*

¶ Item, si ten en taile de certaine terre ent enfeoffa vn auter, &c. et ad issue et morust, son issue ne poit pas enter, en la terr̃ coment que il ad title et droit a ceo, mes est mis a son action que est appel Formedon en le discender, &c.

Sect.596,597.

¶ Item, ſi ſoit teñ ẽ le taile, l' reuerſiõ eſteant al donor et a ſes heires, ſi le tenant fait feoffment, &c. et mozuſt ſans iſſue, celuy en le reuerſion ne poit enter, mes eſt mis a ſon action de Formedon en le reuerter.

ALſo if there bee tenant in taile, the reverſion being to the Donor and his heires, if the Tenant make a feoffment, & c. and die without iſſue, he in the reverſiõ cannot enter, but is put to his action of *formedõ in le reuerter*.

Sect.597.

¶ En meſme l' maner eſt, lou tenãt en le taile ſeiſie de certeine terre dont le remainder eſt a vn auter en le taile, ou a vn auter en fee. Si le tenant en le taile alienaſt en fee, ou en fee taile, et puis deuiaſt ſans iſſue, ceux en le remainder ne poiẽt enter, mes ſont mis a lour briefe de Formedon en le remainder, &c. et pur ceo que per force de tielx feoffments et alyenations en les caſes auantdits, et en ſemblables caſes, ceux queux ont title et droit apres la mozt d' tiel feoffour ou alienour, ne poient pas enter, mes ſont miſes a lour actions Vt ſupra, et p̃ ceo cauſe tiels feoffments et alienations ſont appels diſcontinuances.

IN the ſame maner is it, where tenãt in taile is ſeiſed of certaine land whereof the remainder is to another in taile, or to another in fee. If the tenant in taile alien in fee, or in fee taile, & after die without iſſue, they in the remainder may not enter, but are put to their writ of *Formedon* in the remainder, &c. and for that that by force of ſuch feoffmẽts and alienations in the caſes aforeſaid, and the like caſes, they that have title & right after the death of ſuch a feoffor or alienor may not enter, but are put to their actions, *Vt ſupra*, and for this cauſe ſuch feoffments and alienations are called diſcontinuances.

¶ *Fait feoffment, &c.* Here is implied Fee ſimple, Fee taile, or eſtate for life. and in this and the next Section Littleton putteth two caſes, where if the iſſues in taile taile, they in the reuerſion and remainder are driuen to their Formedon in reuerſion or remainder, and this remaineth, as it was when Littleton wrote, not altered by any Statute. And the reaſon whereof theſe Alienations in the ſeuerall caſes in this and the next Section doe make a Diſcontinuance, and put him in the reuerſion or remainder that right had to his Action, and tooke away his entry, was for that hee was priuy in eſtate, and for the benefit of the Purchaſor, and for the ſafeguard of his Warrantie, ſo as every mans right might bee preſerued, viz. to the Demandant for his ancient right, and to the Feoffee for the benefit of his Warrantie, which was founded vpon great reaſon and equitie, which benefit of the Warrantie ſhould be preuented and auoided if the entrie of him that right had were lawfull, and thereby alſo the danger that many times happeneth by taking of poſſeſſions was wiſely preuented by Law. But then it may bee demanded, ſeeing that there was no reuerſion or remainder expectant vpon any eſtate taile at the Common Law, nor the iſſue in taile had any remedy by the Common Law, if the Tenant in taile had alienedy then by what Law is the alienation of Tenant in taile a Diſcontinuance at this day to the iſſue in taile, or to him in reuerſion or remainder? Whereunto it is thus anſwered,

Vide Sect.592.597.601. 637,638.

30.E.1.Formedon 65. 10.E.2.Formedon 61. 13.E.3.46. 12.E.4.3.

swered, that it is prouided by the Statute of W.2.ca.1. De donis conditionalibus, quod non habeant illi quibus tenementum sic fuerit datum potestatem alienandi, &c. Upon these words the Sages of the Law haue construed the said Act according to the rule and reason of the Common Law, and that in diuers and sundry variable manners. For some Alienations of Tenant in taile, they haue adiudged voydable by the Issue in taile by action onely: some at the election of the Issue in taile to auoid it by Action, Entry, or Claime: some are meerely void by the death of the Tenant in taile: which seuerall Constructions were made vpon the selfe same words aforesaid.

18.E.3.22. 19.E.3.Bre. 468. 24.E.3.28. 36.Ass.8. 22.R.2.Discon.5.E.4.3. 4.H.7.17.33 E.3.Formdon. & 13.7.Pl.Com. Smith & Stapletons case.

As for example, If Tenant in taile make a Feoffment in fée, this driues the Issue in taile to his Action, which is called in Law a Discontinuance, and this Construction was made, for that at the Common Law the Feoffment of an Abbot or Bishop, or of the husband seised in the right of his wife, did worke a Discontinuance, and did driue the successor and the wife to their Action, and foreclosed them of their entrie: and as the entrie of the Issue was taken away, so consequently of them in reuersion and remainder. Also if an Abbot, Bishop, or husband in the right of his wife, seised of a Rent, or of any other Inheritance that lieth in Grant, had aliened, it was in the election of the Successor or Wife after the death of her husbands claime the rent, &c. or to bring an Action, for that alienation did not worke a Discontinuance, and so it is by construction in case of Tenant in Taile. Lastly, if the Abbot, Bishop, or Husband, had granted a Rent newly created out of the land, &c. to another in Fee, this had vtterly ceased by their death, and so it is also by construction in case of Tenant in Taile. So as these words (Non habent potestatem alienandi) doe worke these effects, viz. as to Lands, That a Feoffment barreth not the Issue, &c. of his Action, but worketh a Discontinuance to barre him of his Entrie: as to Rents or any thing in esse, that lie in grant, that the said words doe take away his power to make any Discontinuance: as to Rents, &c. newly created, that they take away his power to make them to continue longer than during his life.

But there is a diuersitie betweene an Alienation working a discontinuance of an Estate which taketh away an entrie, and an alienation working, diuesting or displacing of Estates which taketh away no entry. As if there be Tenant for life, the remainder to A. in Taile, the remainder to B. in fee, if Tenant for life doth alien in Fée, this doth diuest and displace the remainders, but worketh no discontinuance. And therein it is to be obserued, That to euery Discontinuance there is necessary a diuesting, or displacing of the estate, and turning the same to a right: for if it be not turned to a right, they that haue the Estate cannot be driuen to an Action. And that is the reason that such Inheritances as lie in Grant, cannot by Grant be discontinued, because such a Grant diuesteth no Estate, but palleth onely that which he may lawfully grant, & so the estate it selfe doth descend, reuert, or remaine, as shall be said hereafter in this Chapter.

A. maketh a gift in Taile to B. who maketh a gift in Taile to C. C. maketh a Feoffment in Fee and dieth without Issue, B. hath Issue and dieth, the Issue of B. shall enter, for albeit the Feoffment of C. did discontinue the reuersion of the Fee simple which B. had gained upon the Estate taile made to C. yet could it not discontinue the right of Intaile which B. had, which was discontinued before: and therefore when C. died without Issue, then did the discontinuance of the estate Taile of B. which passed by his Liuerie, cease, and consequently the entrie of the Issue of B. lawfull, which case may open the reason of many other cases.

Also note, That a Discontinuance made by the husband, did take away the entrie onely of the wife and her heires by the Common Law, and not of any other which claimed by title paramount aboue the Discontinuance. As if Lands had beene giuen to the husband and wife, and to a third person, and to their heires, and the husband had made a Feoffment in Fee, this had beene a discontinuance of the one moitie, and a disseisin of the other moitie: if the husband had died, and then the wife had died, the suruiuor should haue entred into the whole, for hee claimed not vnder the discontinuance, but by title paramount from the first Feoffor, and seeing the right by Law doth suruiue, the Law doth giue him a remedy to take aduantage thereof by entry, for other remedy for that moitie he could not haue.

¶ *Fee, ou Feetaile.* And so it is of an estate for life.

Sect.598,599,600.

¶ Item, si Tenant en Taile soit disseisie, et il relessa per son

Also if Tenant in Taile be disseised, and hee release by his

ſon fait a le Diſſeiſor, et a ſes heires tout le droit, le quel il ad en meſme les tenements, ceo né pas diſcontinuance, pur ceo que rien de droit paſſa al Diſſeiſor forſque pur terme de vie del tenant en le Taile que fiſt le Releaſe, &c.

Deed to the Diſſeiſour and to his heires all the right which he hath in the ſame Tenements, this is no diſcontinuance, for that nothing of the right paſſeth to the Diſſeiſor, but for terme of the life of tenant in Taile, which made the releaſe, &c.

Sect. 599.

¶ Mes per feoffment del tenant en le Taile, fee ſimple paſſa per meſme le feoffement per force de Liuerie de ſeiſin, &c.

BUt by the Feoffment of Tenant in Taile, Fee ſimple paſſeth by the ſame Feoffement by force of the Liverie of Seiſin, &c.

Sect. 600.

¶ Mes per force dun releaſe rien paſſera forſque le droit que il poit loyalment, & droituralment releſſer, ſans leyõ ou damage as auters perſons q̃r ent aueront droit apres ſon deceaſe, &c. Iſſint il eſt graund diuerſity perenter vn Feoffement dun tenant en le taile, et vn Releaſe fait per tenant en le taile.

BUt by force of a Releaſe nothing ſhall paſſe but the right which he may lawfully and rightfully releaſe, without hurt or dammage to other perſons who ſhall have right therin after his deceaſe, &c. So there is great diverſitie betweene a Feoffment of Tenant in Taile, and a releaſe made by Tenant in Taile.

¶ OVr Author hauing put examples of Eſtates, paſſing by tranſmutation of an Eſtate and poſſeſſion, doth in this and the two Sections following put a diuerſitie betweene a Feoffment and a releaſe or confirmation of a bare right: for it is a rule in Law, That the Diſſeiſee or any other that hath a right only by his Releaſe or confirmation, cannot make any diſcontinuance, becauſe nothing can paſſe thereby but that which may lawfully paſſe. But otherwiſe it is of a Feoffment in reſpect of the Liuerie of Seiſin, for that it is the moſt ſolemne and common aſſurance in the Country, and to be maintained for the common quiet of the Realme: and by the Feoffment the Freehold (which is ſo much eſteemed in Law) doth paſſe by open Liuerie to the Feoffee, and by the releaſe a bare right.

9.E.4.18.12.E.4.tit. 5.H.4.8. 21.H.6.58.

Rig:

Sect. 601.

¶ Mes il eſt dit, que ſi le tenãt ẽ taile en ceſt cas releſſa a ſon diſſeiſor, et oblige luy et ſes hẽs

BVt it is ſaid, That if the Tenant in Taile in this caſe releaſe to his Diſſeiſor, and bind him and his heires to Warran-

¶ The reaſon why the addition of the warrantie in this caſe maketh a Diſcontinuance, is that which hath beene ſaid, viz. If the Iſſue in Taile ſhould enter, the warrantie (which is ſo much fauoured

3.H.4.9.22.R.2.Diſcent 5 12.E.4.11. 21.H.7.9. 43.E.3.8. 15.E.4.tit. Diſcent 30. Vi.Sect.596.602.637.658

in

in Law) ſhould be deſtroyed: and therefore to the end that if Aſſets in Fée ſimple doe deſcend, he to whom the Releaſe is made, may plead the ſame, and barre the Demaundant: by which meanes all rights and aduantages are ſaued. And that I may note it once for all, an (Il eſt dit) with Littleton, is as good as a Conceſſum in a Booke caſe.

a Garrantie et moſt, et ceſt garranty diſcendiſt a ſon Iſſue, ceo eſt diſcontinuance per cauſe de le garrantie.

tie, and dieth, and this Warranty deſcend to his Iſſue, this is a Diſcontinuance, by reaſon of the Warrantie.

Sect.602.

CMEs ſi vn home ad Iſſue fits per ſa Feme, et ſa Feme morust, et puis il prent auter Feme, et tenements ſont dones a luy et a ſa ſecond Feme, et a les heires de lour deux corps engendres, et ils ont iſſue vn anter fits, et le ſecond Feme morust, et puis le Tenant en le taile eſt diſſeiſe, et il releſſa al Diſſeiſor tout ſon droit, &c. & oblige luy & ſes heires a le garrantie, &c. et deuia, ceo neſt pas diſcontinuance al iſſue en le Taile per l'ſecond feme, mes il poit bien enter, pur ceo que le garrantie diſcendiſt a ſon eigne frere que ſon pier auoit per le primer feme, &c.

BUt if a man hath iſſue a Sonne by his Wife, and his Wife dieth, and after he taketh another wife, and Tenements are given to him and to his ſecond wife, and to the Heires of their two bodies engendred, and they have iſſue another ſonne, and the ſecond Wife dieth, and after the Tenant in taile is diſſeiſed, and hee releaſe to the Diſſeiſor all his right, &c. and bind him and his heires to Warrantie, &c. and die, this is no Diſcontinuance to the Iſſue in Taile by the ſecond wife, but he may well enter for that the Warranty deſcendeth to his elder brother which his Father had by the firſt wife, &c.

Sect.603.

CEN meſme le manner eſt, lou tenements ſont diſcendable a le fits puiſne ſolonq̃ le cuſtome de Burgh Engliſh, queux ſont entailes, &c. et le tenant en le taile ad deux fits, & eſt diſſeiſie, et il releſſa a ſon Diſſeiſor tout ſon droit oue garrantie, &c. et morust, le puiſne fits poit enter ſur le Diſſeiſor, nient obſtant le garrantie, pur ceo que le garrantie diſcendiſt al eigne fits, car touts foits le Garrantie

IN the ſame manner is it, where Lands are deſcendible to the youngeſt ſonne after the Cuſtome of Burrough-Engliſh, which are entayled, &c. and the Tenant in Taile hath two ſonnes, and is diſſeiſed, and he releaſeth to his Diſſeiſour all his right with Warrantie, &c. and dieth, the younger ſon may enter upon the Diſſeiſor notwithſtanding the warranty, for that the Warranty deſcendeth to the elder ſon: for alwayes the war-

Max.

tie discendera a celuy que est heire per le common ley.

rantie shall descend to him who is heire by the Common Law.

¶ By these two examples in this and the Section next following, it appeareth that a warrantie being added to a release or Confirmation, and descending vpon him that right hath to the Lands maketh a Discontinuance, otherwise it is out of the reason of the Law, and worketh no Discontinuance, if the warrantie descendeth vpon another.

¶ *Oue garrantie, &c.* Here is implied that he doth binde him and his heires to warrant to the releasée and his heires.

¶ *Touts foits le garrantie discendist sur le heire al Common ley.* This is a Maxime of the Common Law, and hereof more shall be said in the Chapter of Warrantie, Sections 718.735.736.737. so as it is not the warrantie onely that maketh a Discontinuance, but the warrantie and the Discent vpon him that right hath together.

13.H.4.Garrantie 54. 19.R.2.Garrantie 100.

Sect.604.

¶ Item, si vn Abbe soit disseisie, & il relessa a le disseisor ouelque garrantie, č nest pas discontinuance a son successor, pur ceo que rien passa per cel releas, forsque le droit que il ad durant le temps que il est Abbe, & le Garrantie est expire per son priuation, ou per sa mort.

ALso if an Abbot bee disseised and hee releaseth to the disseisor with warrantie, this is no Discontinuance to his successor, because nothing passeth by this release but the right which hee hath during the time that he is Abbot, and the Warrantie is expired by his priuation, or by his death.

¶ The reason hereof yelded by Littleton is for that the warranty is expired by his priuation or death.

¶ *Per son priuation ou per sa mort.* Note that priuation is here resembled to death, and so is translatiō also, wherein this diuersitie is worthy of obseruation, that when a Bishop, &c. make an estate, lease, grant of a Rent charge, warrāty, or any other act which may tend to the diminution of the reuenues of the Bishoprieke, &c. which should maintaine the successor, there the priuation or translatiō of the Bishop, &c. is all one with his death. But where the Bishop is Patron and Ordinary, and confirmeth a Lease made by the Parson without the Deane and Chapter, and after the Parson dieth, & the Bishop collateth another, and then is translated, yet his Confirmation remaineth good, for the Reuenues that are to maintaine the successor are not hereby diminished. And the like diuersitie doth hold in case of resignation, notwithstanding (m) the authority to the contrary.

Vide 29.E.3.16.

(m) 29.E.3.16. tit. garrant. 99.

Sect. 605.

¶ Item, si home seisie en droit sa feme est disseisie, & il relessa, &c. oue garrantie, ceo nest pas discontinuance a la feme si el suruesquist son baron, mes que el poit enter, &c. Causa patet.

ALso if a man seised in the right of his Wife be disseised, and hee releaseth, &c. with warrantie, this is no discontinuance to the wife if shee surviveth her husband, but that shee may enter, &c. *Causa patet.*

¶ This is euident, vnlesse the wife be heire to the husband (as by law she may be) and then it is a discontinuance for the cause aforesaid.

Sect.

Sect. 606.

ITem, ſi tenant en taile de certaine terre, leſſa meſme la terre a vn auter pur termꝰ des ans, per force de quel le leſſee en eit poſſeſſion, en quel poſſeſſion le tenant en taile per ſon fait releſſa tout le droit que il auoit ẽ meſme le terre, a auer & tener a le leſſee & a ſes heires a touts iours, ceo neſt pas diſcontinuance, mes apres le deceaſe l' tenant en taile, ſon iſſue poit bien enter, pur ceo que per tiel releaſe riens paſſa forſque pur terme de la vie de le tenant en le taile. 3 Rep. 84. b.

ALſo if Tenant in taile of certaine Land letteth the ſame Land to another for terme of yeares, by force whereof the Leſſee hath therof poſſeſſion, in whoſe poſſeſſion the Tenant in tayle by his Deed releaſeth all the right that he hath in the ſame Land: To have and to hold to the Leſſee and to his heires for ever; this is no diſcontinuance, but after the deceaſe of the Tenant in taile, his iſſue may well enter, becauſe by ſuch Releaſe nothing paſſeth but for terme of the life of the Tenant in taile.

CCar per tiel releas riens paſſa. Here is one of the maxims of the Common Law rehearſed by our Author, whereof he doth put diuers examples hereafter.

Sect. 607.

CEn meſme le manner eſt, ſi le tenant en le taile, confirma leſtate le leſſee pur terme des ans, a auer & tener a luy & a ſes heires, ceo neſt pas diſcontinuance, pur ceo que riens paſſa per tiel confirmation forſque leſtate que le tenant en le taile auoit pur terme de ſa vie, &c.

CIN the ſame maner it is, if the tenant in taile confirme the eſtate of the Leſſee for yeares: To have and to hold to him and to his heires, this is no diſcontinuance, for that nothing paſſeth by ſuch Confirmation, but the eſtate which the Tenant in taile hath for terme of his life, &c.

CRiens paſſa per tiel confirmation Here is another of the maximes of the Common Law rehearſed by our Author, whereof he putteth examples hereafter. More ſhall be ſaid hereof in the next Section following.

Sect. 608.

CITem, ſi tenant en taile apres tiel leas granta le reuerſion en fee per ſon fait a auter, & voile que

ALſo if tenant in taile after ſuch leaſe grant the reverſion in fee by his Deed to another, and will-

que apres le terme ſine, q̃ meſme le terre remaindroit a le grantee et a ſes heires a touts iours, & le tenant a term̃ dans atturna, ceo neſt pas diſcontinuance. Car tiels choſes queux paſſont en tiels caſes de tenant en le taile tant ſolement per voy de graunt, ou per confirmation, ou per tiel releaſe, rien poit paſſer pur faire eſtate a celuy a que tiel graunt, ou confirmatiõ, ou releaſe eſt fait forſque ceo que le tenant en taile poit droiturelment faire, et ceo neſt forſque p̃ terme de ſa vie, &c.

leth that after the terme ended, that the ſame land ſhall remaine to the grantee and his heires for ever, and the tenant for yeares attorne, this is no diſcontinuance. For ſuch things which paſſe in ſuch caſes of Tenant in taile only by way of grant, or by confirmation or by ſuch releaſe, nothing can paſſe to make an eſtate to him to whom ſuch grant, or confirmation or releaſe is made, but that which the tenant in taile may rightfully make, and this is but for terme of his life,&c.

Sect. 609.

CAr ſi ieo leſſa terre a vn hom̃ pur terme de ſa vie, &c. et le tenant a terme de vie ieſſe meſm̃ la terre a vn auter pur terme des ans, &c. et puis mon tenant a terme de vie graunta le reuerſion a vn auter en fee, et le tenant a terme des ans atturna, en ceſt caſe le grantee nad en le franktenement forſq; eſtate pur terme de vie ſon grauntor, &c. & ieo que ſuis en le reuerſion de fee ſimple, ne puiſſe enter per force de cel grant del reuerſion fait per mon tenant a terme de vie, pur ceo que per tiel grant mon reuerſion neſt pas diſcontinue, mes tout temps demurt a moy, ſicome il fuit adeuant, nient obſtant tiel grant del reuerſion fait al grantee a luy et a ſes heires, &c, pur ceo que riens paſſa per force de tiel grant forſque eſtate que le grantor auoit, &c.

FOr if I lett land to a man for terme of his life, &c. and the tenãt for life letteth the ſame land to another for terme of years, &c. and after my tenant for life grant the reverſion to another in fee, and the tenant for yeares attorne, in this caſe the grantee hath in the freehold but an eſtate for terme of the life of his grantor, &c. And I which am in the reverſion of the fee ſimple may not enter by force of this grant of the reverſion made by my tenant for life, for that by ſuch grant my reverſion is not diſcontinued, but alwayes remaine unto me as it was before notwithſtanding ſuch grant of the reuerſion made to the grantee, to him and to his heires, &c. becauſe nothing paſſed by force of ſuch grant, but the eſtate which the grantor hath, &c.

Sect.

Sect. 610.

¶ En meſme le maner eſt, ſi le tenant a terme de vie, per ſon fait confirme leſtate ſon leſſee pur terme des ans, a auer et tener a luy et a ſes heires, ou releſſa a ſon leſſee et a ſes heires, vncore le leſſee a terme dans, nad eſtate forſque pur terme de vie de le tenant a terme de vie, &c.

¶ IN the ſame manner is it, if tenant for terme of life by his Deed confirme the eſtate of his Leſſee for yeares, To have and to hold to him and his heires, or releaſe to his Leſſee and his heires, yet the Leſſee for yeares hath an eſtate but for terme of the life of the tenant for life, &c.

Max

¶ *Car tiels choſes que paſſont en tiels caſes de tenant en le taile, &c.* Here is rehearſed another Ancient maxime of the Common Law touching Grants, and hereby it appeareth that a Feoffment in Fee (albeit it be by Parol) is of a greater operation and eſtimation in Law, than a grant of reuerſion by Deed though it be enrolled and Attornement of the Leſſee for yeares of a releaſe, or a Confirmation by Deed for the reaſons aforeſaid. And this is manifeſted by the Examples which our Author here in theſe three Sections putteth.

Sect. 611.

¶ *Forſque eſtate pur terme dans, &c.* Here it is implied that albeit the feoffment made by Leſſee for yeares be a feoffment betweene the Feoffor and feoffee, and that by this feoffment the fee ſimple paſſeth by force of the liuery, yet is it a diſſeiſin to the Leſſor. And here it is worthy to be obſerued, that our Author ſaith that Tenant for terme of yeares may make a feoffment, whereupon it followeth, that the Feoffor may

¶ MEs auterment eſt quant tenant a terme de vie, fait vn feoffmēt en fee, car per tiel feoffement le fee ſimple paſſa. Car tenant a terme dans poit faire feoffment en fee, et per ſon Feoffment le fee ſimple paſſera, et vncore il nauoit al temps del feoffement fait forſque eſtate pur terme dans, &c.

BVt otherwiſe it is when tenant for life maketh a feoffment in fee, for by ſuch a feoffment the fee ſimple paſſeth. For tenant for yeares may make a feoffment in fee, and by his feoffment the fee ſimple ſhall paſſe, and yet he had at the time of the feoffment made but an eſtate for terme of yeares, &c.

thereunto annex a Warrantie, whereupon the Feoffee may vouch him, but of this you ſhall reade more in the Chapter of Warranties, 698.

Sect. 612.

¶ ITem, ſi teñ en le taile granta ſon terre a vn auter pur terme de vie de meſme le tenant en taile, et liuer a luy ſeiſin, &c. et apres per ſon fait il releſſa a le tenant et a ſes heires tout le droit

ALſo if tenant in taile grant his land to another for terme of the life of the ſaid tenant in taile, and deliver to him ſeiſin, &c. and after by his Deed hee releaſeth to the tenant and to his heires all the

droit que il auoyt en meſme la terre, en ceſt cas leſtate del tenant de la terre neſt pas enlarge per force de tiel releas, pur ceo que quant le tenant auoit leſtate en le terre pur terme de vie de le tenant en le taile, donque il auoit tout le droit que le tenant en le taile puiſſoit droiturelment granter ou releſſer, iſſint que per tiel releas nul droit paſſa, entant que ſon droit fuit ale auenant.

right which hee hath in the ſame land, in this caſe the eſtate of the tenant of the land is not enlarged by force of ſuch releaſe, for that when the tenant had the eſtate in the land for terme of the life of the tenant in taile, he had then all the right which tenant in taile could rightfully grant or releaſe. So as by this releaſe no right paſſeth, inaſmuch as his right was gone before.

Sect. 613.

¶ Item, ſi tenant en le taile per ſon fait grant a vn auter tout ſon eſtate que il auoit en les tenũts a luy tailes, a auer et tener tous ſon eſtate al auter et a ſes heires a touts iours, et deliuera a luy ſeiſin accordant, en ceſt cas le tenant a que laliena-tion fuit fait, nad auter eſtate forſque pur terme de vie del tenant en taile, et iſſint il poit bien eſtre proue, que le tenant en taile ne poit pas graunter ne aliener ne faire aſcun droiturel eſtate de franktenement a auter perſon, forſque pur terme de ſa vie demeſme, &c.

ALſo if tenant in taile by his Deed grant to another all his eſtate which hee hath in the tenements to him entailed, To have and to hold all his eſtate to the other, and to his heires for ever, and deliver to him ſeiſin accordingly; in this caſe the tenãt to whom the alienation was made hath no other eſtate but for terme of the life of tenant in taile. And ſo it may be well proved, that tenant in taile cannot grant nor alien, nor make any rightfull eſtate of freehold to another perſon, but for terme of his owne life onely, &c.

¶ The meaning of Littleton in both theſe caſes, in this and in the Section next preceding is, that having regard to the iſſue in taile, and to them in reuerſion or remainder, Tenant in taile cannot lawfully make a greater eſtate than for terme of his life, and therefore this Releaſe or Grant is no Diſcontinuance. But in regard of himſelfe this Releaſe or Grant leaueth no reuerſion in him, but put the ſame in abeiance, ſo as after this Releaſe or Grant made he ſhall not haue any action of waſte, &c. 13.H.7.10.a. Brooke Releaſe 95.

¶ *Grant tout ſon eſtate, Vid. Sect. 650.* Action of waſte, &c. there is implied that he ſhall not enter for a forfeiture if after the Releaſe or Grant the Leſſee maketh a feoffement in fee.

Sect. 614.

¶ CAr ſi ieo done Terre a vn home en taile, ſauant

FOr if I give land to a man in taile, ſaving the reveſiõ to my

¶ HEre Littleton proueth, that the feoffee of Tenant in Taile hath no rightfull eſtate having

hauing reſpect to two perſons the one is to the Donor, whoſe reuerſion is diueſted and diſplaced, and the other to the Iſſue in Taile, who is driuen to his Action to recouer his Right.

¶ *A tort luy deforce.*

(n) Deforciare is a word of Art, and cannot be expreſſed by any other word, for it ſignifieth, to with-hold lands or tenements from the right owner, in which caſe either the entrie of the right owner is taken away, or the Deforceor holdeth it ſo faſt, as the right owner is driuen to his reall Præcipe, wherein it is ſaid Vade A. cum iniuſtè deforceat or the Deforceor ſo diſturbeth the right owner, as he cannot enioy his owne: and therefore it is ſaid, Per hoc autem quod dicitur in brevi vltimæ præſentationis deforceant, videtur quibuſdam quod querens innuat per hoc quod deforceans ſit in ſeiſina, ſicut in brevi de recto, ſed revera non eſt ita, ſed ſatis deforceat qui poſſeſſorem vti ſeiſina non permiſerit omninò vel minus commodo impediat præſentando, appellando, impetrando, ſecundum quod dicitur de diſſeiſitore, ſatis facit diſſeiſinam, qui vti non permiſit poſſeſſorem vel minus commodè licet omninò non expellat. In this caſe that Littleton putteth, the Diſcontinuée being in by wrong, is no Diſſeiſor, Abator, or Intrudor, but a Deforceor, and hereof commeth Deforcement, and thus did Antiquitie deſcribe it: (o) Deforcement, come ſi aſcun enter en auter tenement tout come le veray Seignior eſt al Market, ou ailors, & retorne, & ne poet auer entre eins, eſt celuy deforce & debotue. And for that at the firſt the withholding was with violence and force, it was called a deforcement of the Lands or Tenements, but now it generally extended to all kinde of wrongfull withholding of Lands or Tenements from the right owner. There is a Writt called a Quod ei deforceat, and lieth where Tenant in Taile, or Tenant for life, loſeth by default, by the Statute he ſhall haue a Quod ei deforceat againſt the Recoueror, and yet he commeth in by courſe of Law.

(n) Bract. li. 4. fol. 238. Flet. lib. 5. cap. 11.

Bract. & Flet. vbi ſupra.

(o) Mir. cap. 2. Sect. 15.

Weſtm. 2. cap. 4.

le reuerſion a moy, et puis le tenant en le taile enfeoffa vn auter en fee, le feoffee nad pas droiturel eſtate ẽ les tenemẽts pur deux cauſes. Un eſt, pur ceo que p̃ tiel feoffemẽt ma reuerſiõ eſt diſcontinue, le quel eſt a tort fait, et nẽy a droit fait. Un auter cauſe eſt, ſi l̃ tenant ẽ taile morust, et ſõ iſſue ſuiſt Briefe de Formedõ enuers le feoffee, l̃ bẽ dirra, et auxy le count &c. q̃ l̃ feoffee a tort luy deforce, &c. Ergo ſil a tort luy deforce, &c. il nad pas droiturel eſtate.

ſelfe, and after the Tenant in taile infeoffeth another in Fee, the Feoffee hath no rightfull eſtate in the Tenements for two cauſes: One is, for that by ſuch Feoffement my reverſion is diſcontinued the which is a wrong and not a rightfull Act. Another cauſe is, if the Tenant in Taile dieth, and his Iſſue bring a Writ of *Formedon* againſt the Feoffee, the Writ and alſo the Declaration ſhall ſay, &c. That the Feoffee by wrong him deforces, &c. *Ergo* if he deforceth him by wrong, he hath no right eſtate.

Sect. 615.

¶ Item, ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le Taile, ſi celuy en le remainder voile graunter ſon remainder a vn auter en fee per ſon fait, et le Tenant a terme de vie atturna, ceo neſt pas diſcontinuance de le remainder.

ALſo if Land bee let to a man for terme of his life, the remainder to another in Taile, if hee in the remainder will grant his remainder to another in Fee by his Deed, and the Tenant for life attorne, this is no diſcontinuance of the Remainder.

Sect.

Sect. 616.

CItem, ſi home ad Rent ſer-uice ou Rent charge en Taile, et il granta le dit Rent a vn auter en fee, et le tenant at-torna, ceo neſt pas diſcontinu-ance,&c.

ALſo if a man hath a Rent ſer-vice or Rent charge in taile, and hee grant the ſaid Rent to another in Fee, and the Tenaunt attorne, this is no Diſcontinu-ance,&c.

Sect. 617.

CItem, ſi home ſoit Tenant en Taile, de vn aduowſon en groſſe, ou de vn Com-mon en groſſe, ſil per ſon fait voile graunt laduowſon, ou le Common a vn auter en fee, ceo neſt pas diſcontinuance. Car en tielx caſes les grauntees nont eſtate forſque pur terme de vie de le Tenant en taile que fiſt le Grant,&c.

ALſo if a man bee Tenaunt in Taile of an Aduowſon in Groſſe, or of a Cõmon in Groſſe, if he by his Deed will graunt the Aduowſon or Common to another in Fee, this is no Diſcontinuance; for in ſuch caſes the Grauntees have no eſtate but for terme of the life of Tenant in Taile that made the Grant,&c.

CBy the caſes in theſe thrée Sections it appeareth, That if a Remainder or a Rent ſer-uice, or a Rent charge, or an Aduowſon, or a Common, or any other Inheritance that lieth in Grant, be granted by Tenant in Taile, it is no Diſcontinuance, as for-merly hath beene ſaid. Brack.l.2.f. 3.& f.366. 378.Brit.f.187.Mir.ca.2. §.17.Flet.lib.3.ca.15.

(p) Note, here is an Aduowſon named by Littleton, as a thing that lieth in Grant, and paſſeth not by Liuerie of Seiſin. v. 628 (p)5.E.3.58. 21.E.37,38, 43.E.3.1.b.13.H.6.4. 5.H.7 37, 18.H.8. 16.Eliz.Dy.323.b.

*Sect.*618.

CEt nota, que de tiels choſes que paſſont per voy de grant per Fait fait en pays, et ſans liuery, la tiel graunt ne fait pas diſcontinuance, come en les caſes auantdits, et en auter caſes ſemblables, &c. et coment que tiels choſes ſont graunts en Fee per fine leuie en le Court

AND note that of ſuch things as paſſe by way of grant, by Deed made in the Countrie, and without Livery, there ſuch Grant maketh no diſcontinuance, as in the caſes aforeſaid, and in other like caſes, &c. And albeit ſuch things bee graunted in Fee, by Fine levied in the Kings Court, &c.

CHere is the generall reaſon yeelded of the precedent caſes and the like, for that it is a Maxime in Law, That a Grant (d) by Deed of ſuch things as doe lie in Grant, and not in Liuerie or Seiſin, doe worke no diſcontinuance. But the particular reaſon is, for that of ſuch things the Grant of Tenant in Taile worketh no wrong, either to the Iſſue in Taile, or to him in reuerſion or remainder, for nothing doth paſſe but onely during the life of Tenant in Taile, which is lawfull, and euery diſcontinuance worketh a wrong, as hath beene ſaid. (d)6.E.3.56. 32.E.3.Diſ-cont.2.33.Aſſ.8.4.H.7.17 21.H.7.42. 15.H.7.19. 21.H.6.52,53. 5.E.4.3. 21.E.4.5 22.R.2. Diſ-cont.56. 38 H.8.Diſ-cont.31.Brooke.19.E.3. Bre.468.Pl.Com.435. 18.Aſſ.p.2. *Nota.*

(q) If Tenant in Taile of a Rent seruice, &c. or of a Reuersion, or Remainder in Taile, &c. grant the same in Fee with warrantie, and leaueth Assets in Fee simple, and dieth, this is neither barre nor discontinuance to the issue in taile, but he may distraine for the Rent or seruice, or enter into the land after the decease of Tenant for life. But if the Issue bringeth a Formedon in the Discender, and admit himself out of possession, then he shall be barred by the warrantie and Assets.

(q) 33.E.3.Formd.47. 13.H.7.10.36.Ass.8. 4.H.7.17.

le Roy, &c. uncore ceo ne fait discontinuance, &c.

yet this maketh not a Discontinuance, &c.

(r) Tenant in Taile of a Rent disseiseth the Tenant of the Land, and maketh a Feoffment in fee with warrantie and dieth, this is no discontinuance of the Rent, but the Issue may distreyne for the same, and albeit the warrantie extend to the Rent, yet by the rule of Littleton it lieth not in Discontinuance: and where the thing doth lie in Liuerie, as Lands and Tenements, yet if to the conueiance of the Freehold or Inheritance, no Liuerie of Seisin is requisite, it worketh no discontinuance. (f) As if Tenant in Taile exchange Lands, &c. or if the King being Tenant in Taile, grant by his Letters Patents the Lands in Fee, there is no Discontinuance wrought.

(r) 3.H.7.12

9.E.4.22.

(f) 38.H.8.paten.Br.101. Pl.Com.233.Li.1.f.26. Alton Woods case.

¶ *Per Fine.* Of a thing that lieth in Grant, though it be granted by Fine, yet it worketh no Discontinuance, and this is regularly true.

(t) If Tenant in taile make a Lease for yeares of Lands, and after leuie a Fine, this is a Discontinuance, for a Fine is a Feoffment of Record, and the Freehold passeth. But if tenant in Taile maketh a Lease for his owne life, and after leuie a Fine, this is no Discontinuance, because the Reuersion expectant vpon a state of Freehold which lieth onely in Grant passeth thereby.

(t) 15.E.4.tit.Discont.30. 6.H. 56,57.

Sect. 619.

¶*Nota, si ieo done terre a vn auter en taile, et il lessa mesme la terre a vn auter p̄ tme dans, et puis le Lessor graunta le reuersion a vn auter en fee, et le tenant a terme dans atturna al Grantee, et le terme est expire durant la vie le tenant en taile, per que le Grantee enter, et puis le tenant en taile ad issue et d̄uie, en ceo case ceo nest discontinuance, nient obstant que le Grant soit execute en la vie le Tenaunt en Taile, pur ceo que al temps de Lease fait a terme dans, nul nouel Fee simple fuit reserue en le Lessor, eins le Reuersion demurt a luy en Tail sicome il fuit deuant le Lease fait.*

NOte, if I give Land to another in Taile, and hee letteth the same land to another for terme of yeares, and after the Lessor graunteth the reversiō to another in fee, and the tenant for yeares attorne to the grantee, and the terme expireth during the life of the tenant in Taile, by which the Grantee enter, and after the tenant in taile hath Issue and die: in this case this is no Discontinuance, notwithstanding the Grant be executed in the life of the tenant in Taile, for that at the time of the Lease made for yeares, no new Fee simple was reserved in the Lessor, but the Reversion remained to him in Taile, as it was before the lease made.

¶*This is added to Littleton, and not in the Originall, and therefore I purpose to omit it: Yet is the case good in Law, because neither the Lease for yeares, nor the grant of the Reuersion diuesteth any Estate.

Sect.

Sect.620.

CMES si le tenant en taile fait leas a terme de vie le lessee, &c. en cest case le tenãt en le tayle ad fait vn nouel reuersion de fee simple en luy, pur ceo que quant il fist leas p terme de vie, &c. il discontinua le taile, &c. p force de mesm̃ le leas, & auxy il discontinua ma reuersion, &c. & il couient que la reuersion de fee soit en ascun person ẽ tiel cas, et il ne poit estre en moy que sue donor, entant que mon reuersion est discontinue. Ergo il couient que la reuersion de fee soit en le tenant en le taile, que discontinua ma reuersion per tiel leas, &c. Et si en cest case le tenant en le taile graunta per son fait cest reuersion en fee a vn auter, et le tenant a terme de vie atturna, &c. et puis le tenant a terme de vie morust, viuant le tenant en le taile, et le grantee de le reuersion entra, &c. en la vie le tenant en le taile, donqz ceo est vn discontinuance en fee, & si apres le tenant en le taile morust, son issue ne poit enter, mes est mis a son brẽ de Formedon.

BUt if the Tenant in taile make a lease for terme of the life of the Lessee, &c. In this case the Tenant in taile hath made a new reversion of the fee simple in him, because when hee made the Lease for life, &c. he discontinued the tayle, &c. by force of the same Lease, and also hee discontinued my reversion, &c. And it behoveth that the reversion of the fee simple be in some person in such case. And it cannot be in me whicham the donor, inasmuch as my reversion is discontinued, *Ergo* the reversion of the fee ought to be in the tenant in taile, who discontinued my Reversion by Lease, &c. And if in this case the Tenant in tayle grant by his Deed this reversion in fee to another, and the Tenant for life attorne, &c. and after the Tenant for life dieth, living the Tenant in taile, & the grantee of the reversion enter, &c. in the life of the Tenant in taile, then this is a discontinuance in fee, and if after the Tenant in tayle dieth, his issue may not enter, but is put to his Writ of *Formedon*.

CPur terme de vie del lessee, &c. Here is implied, or for terme of another mans life.

C *Nouel reversion de fee simple*: which must bee understood of a fee simple determinable vpon the life of the Lessee, which our Author here calleth a fee simple, for if the Lessee dieth, the Donee is Tenant in taile againe as hee was before, and that is the reason that if in that case hee granteth ouer the reuersion and dieth, and after the death of Tenant in taile the lessee dieth, the entry of the issue is lawfull, because by the death of the Lessee the Discontinuance is determined, and consequently the grant made of the reuersion gained vpon that discontinuance is void also. 15.E 4.Tit.Discont.30.

If Tenant in taile maketh a lease for three liues according to the Statute of 32.H.8. that is no discontinuance of the estate taile or of the reuersion, because it is authorised by Act of Parliament whereunto euery man in iudgement of Law is partie. 32.H.8.cap.28.

And yet in some cases the freehold may be discontinued & not the reuersion. (u) As if the husband & wife make a lease for life by Deed of the wiues Land reseruing a rent, the husband dieth, this was a Discontinuance at the Common Law for life, and yet the reuersion was not discontinued, but remained in the wife. Otherwise it is if (u) 38 E.3.32. 18.Ass.2. 18.E.3.54. 22.H.6.24.

if the husband had made the Leaſe alone.

21.H.6.52.15.E.4.tit. Diſcont.30.

¶ *Et puis le tenant a tarme de vie moruſt &c.* The like Law it is if the Tenant for life ſurrender to the grantee, or if the grantee recouer in an Action of Waſte, or entor for the forfeiture.

32.E.3.Diſcont.2. 43.E.3.Entr.Cong.31. 3.H.4.9.22.R.2.diſcont. 50. 34.Aſſ.6.Pl.4.38. Aſſ.6.p.6.43.Aſſ.6.48. 18.E.3.43.21.H.6.52.15. E.4.tit. Diſcontinuance 30. Booke tit.diſcont. 3. & 14.4.H.7.17. 21.H.7.11.

¶ *Auxit ſeiſin & execution.* And here it is to be obſerved, that when the reuerſion in this caſe is executed in the life of Tenant in taile, it is equiualent in iudgement of Law to a feoffment in fée, for the ſtate for life paſſed by Liuery.

(w) 21.H.6.52.53.

(w) If Tenant in taile make a Leaſe for life, the remainder in fée, this is an abſolute Diſcontinuance albeit the remainder be not executed in the life of Tenant in taile, becauſe all is one eſtate and paſſeth by one liuery. And ſo note a diuerſitie betweene a grant of a reuerſion, and a limitation of a remainder. B. Tenant in taile maketh a gift in taile to A. and after B. releaſeth to A. and his heires, and after A. dieth without iſſue, the iſſue of the firſt Donée may enter vpon the collaterall heire, becauſe A. had not ſeiſin and execution of the reuerſion of the land in his Demeſne as of fée, as Littleton here ſpeaketh. But if Tenant in taile make a leaſe for the life of the Leſſee, and after releaſeth to him and his heires, this is an abſolute Diſcontinuance, becauſe the fée ſimple is executed in the life of Tenant in taile.

(y) 34.E.1.Quare Impedit 179 22.E.3.6.17.E. 3.3.33.h.3.Quare Imp. 196.23.Aſſ.8.50.E.3. 26.

(y) If Tenant in taile of a Manor whereunto an Aduowſon is appendant maketh a feoffment in fée by deed (as it ought to be) of one Acre with the aduowſon, and the Church becommeth void, and the feoffee preſent, Tenant in taile dieth, the Church becommeth void, the iſſue ſhall not preſent vntill he hath recontinued the Acre. But if the feoffee had not executed the ſame by preſentment, then the iſſue in taile ſhould haue preſented. And ſo was it at the Common Law of the husband ſeiſed in the right of his wife, mutatis mutandis.

36.Aſſ.8.42.E.3.20. 22.R.2.Diſcont.50.

If a fine be leuied to a Tenant in taile, and he granteth and reuzeth the Land to him and his heires, and die before execution, this is no diſcontinuance. Otherwiſe it is, if it had beene executed in the life of Tenant in taile.

21.H.6.52.53. Brooke tit.Diſcont.3. 21.H.7.11.Lib.1.fol.85. Lib.10.fol 96.97.

¶ If Tenant in taile make a Leaſe for life of the Leſſee, and after grant the Reuerſion with warrantie, and dieth before execution, this is no Diſcontinuance, becauſe the Diſcontinuance was (as hath beene ſaid) but for life, and the warrantie cannot enlarge the ſame.

(*)15.E.4.Diſcont.30. Vide Sect.642.

¶ *Et ceo eſt per force del grant de meſme le tenant en taile.* Hereupon Littleton himſelfe is of the ſame opinion, (*) as it appeareth he was in our Bookes, that if Tenant in taile make a Leaſe for life, and grant the Reuerſion in fée, and the Leſſee attorne, and that Grantée granteth it ouer, and the Leſſee attorne, and then the Leſſee for life dieth, ſo as the reuerſion is executed in the life of Tenant in taile, yet this is no Diſcontinuance, but that after the death of Tenant in taile the iſſue may enter, becauſe (as Littleton here ſaith) he is not in of the grant of the Tenant in taile, but of his Grantée.

If at this day Tenant in taile make a Leaſe for life, and after by Deed indented & inrolled according to the Statute he bargaineth and ſelleth the Reuerſion to another in fée, and the Leſſee dieth, ſo as the Reuerſion is executed in the life of Tenant in taile, albeit the bargainee is not in the per by the Tenant in taile, yet in aſmuch as he claimeth the Reuerſion immediately from him, which is executed in his life time, this is a Diſcontinuance. And ſo it is, and for the ſame cauſe if Tenant in taile had granted the Reuerſion to the vſe of another and his heires. If Tenant in taile maketh a Leaſe for life, and after diſſeiſeth the Leſſee for life and maketh a feoffment in fée, the Leſſee dieth, and then Tenant in taile dieth, albeit the fée be executed, yet for that the fée was not executed by lawfull meanes, (as in all the Caſes of Littleton it appeareth it ought to be) it is no Diſcontinuance.

Sect. 621.

'En meſme le manner ſerra, ſi en le caſe auant dit, le tenant a terme de vie apres lattournement al grantee vſt alien en fee, & le grantee vſt enter pur forfeiture de ſon eſtate, et puis le tenant en taile vſt deuie, ceſt vn diſcontinuance, Cauſa qua ſupra. ¶.

IN the ſame manner ſhall it be, if in the caſe aforeſaid the Tenant for terme of life after the Attornement to the grantee had aliened in fee, and the grantee had entred by forfeiture of his eſtate, and after the Tenant in tayle had died, this is a Diſcontinuance, *Cauſa qua ſupra.* ¶.

¶ This is added in this place, but in the Originall it commeth in after in this Chapter. § 629

21.H.6.52.53. 15.E.4. Diſcont. 30.

Sect. 622.

¶ Mes en ceſt cas, ſi tenant en taile que granta le reuerſion, &c. moruſt, viuant le tenant a terme de vie et puis le tenant a terme de vie, moruſt, & puis celuy a que le reuerſion fuit graunt enter, &c. donque ceo neſt pas diſcontinuance, mes que iſſu del tenant en taile poit bien enter ſur le grauntee del Reuerſion, pur ceo que le Reuerſion que le grauntee auoit, &c. ne fuit executе, &c. en le vie le tenant en taile, &c. Et iſſint il eſt graund diuerſity quant tenant en taile fait vn leas pur terme dans, & lou il fait leas pur terme de vie, car en lun cas il ad reuerſion en taile, & en lauter cas il ad vn reuerſion en fee.

BUt in this caſe, if tenant in taile that grants the reverſion, &c. dieth living the tenant for life, and after the Tenant for life dieth, and after hee to whom the reverſion was granted enter, &c. then this is no diſcontinuance, but that the iſſue of the tenant in tayle may well enter upon the Grantee of the reverſion, becauſe the Reverſion which the Grantee had, &c. was not executed, &c. in the life of the tenant in taile, &c. And ſo there is a great diverſitie when Tenant in tayle maketh a Leaſe for yeares, and where hee maketh a Leaſe for life, for in the one caſe hee hath a reverſion in tayle, and in the other caſe he hath a reverſion in fee.

¶ Of this ſufficient hath been ſaid before, and is of it ſelfe manifeſt and needeth no explication.

Like Law was at the Common Law of a husband ſeiſed of Land in right of his wife, Mutatis mutandis. 18.Aſſ.6.21.H.6.53.

Sect.

Sect. 623.

¶ CAr ſi terre ſoit done a vn hõe et a ſes heires males de ſon corps engendres, le quel ad iſſue deux fits, et leigne fits ad iſſue file et deuy, et le tenant en taile fait vn leas pur terme des ans, et deuy, ore le reuerſion diſcendiſt a le fits puiſne, pur ceo que le reuerſion fuit forſque en le taile, et le fits puiſne eſt heire male, &c. Mes ſi le tenant vſt fait vn leas pur terme de vie, &c. et puis morust, ore le reuerſion diſcendiſt a le file del eigne fits, pur ceo que le reuerſion eſt en fee ſimple, et la file eſt heire generall, &c.

FOr if land bee given to a man and to his heires males of his body engendred, who hath iſſue two ſonnes, and the eldeſt ſonne hath iſſue a daughter & dieth, and the tenant in taile maketh a leaſe for yeares and die, now the reverſion deſcendeth to the younger ſonne, for that the reverſion was but in the taile, and the youngeſt ſonne is heire male, &c. But if the tenant had made a leaſe for life, &c. and after died, now the reverſiõ deſcend to the daughter of the elder brother, for that the reverſon is in the fee ſimple, and the daughter is heire generall, &c.

¶ This is euident also and nẽdeth no explanation.

Sect. 624.

¶ ITem, ſi home ſoit ſeiſie en taile de terres deuiſables per teſtament, &c. et il ceo deuiſa a vn auter en fee, et morust, et lauter enter, &c. ceo neſt pas diſcontinuance, pur ceo que nul diſcontinuance fuit fait en la vie del tenant en le taile, &c.

ALſo if a man be ſeiſed in taile of lands deuiſable by Teſtament, &c. and hee deviſeth this to another in fee, and dieth and the other enter, &c. this is no diſcontinuance, for that no diſcontinuance was made in the life of the Tenant in taile, &c.

9.E.4.12. 20.H.6.14. Vid.18.E.3.8.

¶ This is manifeſt and nẽdeth no explanation: Onely this is to be obſerued, that no Diſcontinuance can be made by Tenant in taile, but ſuch as is made, and taketh effect in his life time, which is here implied in the (&c.)

Sect. 625.

AND of this opinion is Littleton (a) in our bookes, and ſaith that ſo it was adiudged.

(a) 9 E 4.24.b.

¶ *Enfeoffe le donor, &c.* This muſt bee vnderſtood where the reuerſion of the Donor is immediatel y ex-

¶ ITem, ſi terr̃ ſoit done en taile, ſauant le reuerſion al donor, et puis l' tenãt en taile per ſon fait enfeoffa l' donor a

ALſo if land be given in taile, ſaving the reverſion to the Donor, and after the Tenant in taile by his deed enfeoffe the Do-

Lib.1.fol.140.in Chudlyes caſe.

sauer et tener a luy et ases heirs a touts iours, et liuer a luy seisin accordant, &c. ceo nest pas discontinuance, pur ceo que nul poit discontinuer lestate en le taile, sinon q̄ il discontinue le reuersion celuy que ad le reuersion, &c. ou le remainder, si aleun ad le remainder, &c. & entant que per tiel feoffment fait a le donor (le reuersion adonqz esteant en luy) son reuersion ne fuit discontinue ne alterate, &c. cest feoffmēt nest pas discontinuance, &c.

nor, To have and to hold to him and to his heirs for ever, and deliver to him seisin accordingly, &c. this is no discontinuance, because none can discontinue the estate taile, unlesse he discontinueth the reversion of him who hath the reversion, &c. or remainder, if any hath the remainder, &c. and inasmuch as by such feoffment made to the Donor (the reversiō then being in him) his reversion was not discontinued nor altred, &c. this feoffment is no discōtinuance, &c.

pectant vpon the estate of the Donée. (b) For if a man make a Gift in taile the remainder in taile, reseruing the reuersion to himselfe: In this case if the Donée enfeoffe the Donor, this is a discontinuance, because there is a meane estate, and so doth Littleton here put his case of a reuersion immediately expectant vpon the gift in taile. Also it is to be intended of a feoffement made to the Donor solely or only, for if the Donée enfeoffe the Donor and a stranger, this is a discontinuance of the whole land.

(b) 41.Ass.2. 41.E.3.2.

28.H.8.Dier.12.

But if Tenant for life make a Lease for his owne life to the Lessor the remainder to the Lessor and an estranger in fee: In this case for asmuch as the limitation of the fee should worke the wrong, it enureth to the Lessor as a surrender for the one moyety, and a forfeiture as to the remainder of the stranger, for he cannot giue to the Lessor that which he had before, as our Author here saith, and as to the remainder to the stranger, it is a forfeiture for his moytie, and when the Lessor entreth he shall take the benefit of it. But if two Ioyntenants be, and one of them enfeoffe his Companion and a stranger, and make Liuery to the stranger, this shall vest onely in the stranger, because the Liuery cannot enure to his Companion.

¶ *Nul poet discontinuer lestate en taile, sinon que il discontinue le reuersion, &c. ou le remainder, &c.* And therefore for this cause if the reuersion or remainder be in the King, the Tenant in taile cannot discontinue the estate taile. (c) But Tenant in taile, the reuersion in the King, might haue barred the estate taile by a Common recouery vntill the Statute of 33.H.8.ca.20. which restraineth such a Tenant in taile, but that common recouery neither barred nor discontinued the Kings reuersion.

40.Ass.36. 21.Ass.36. 18.E.3.45.F.N.B. 142.a. Pl.Com.555.

(c) 33.H.8.tit.Taile.Br.41 Pl.Com.vbi supra.

Note the reuersion may be reuested, and yet the Discontinuance remaine. (d) As if a Feme Couert be Tenant for life, and the husband make a Feoffment in fee, and the Lessor enter for the forfeiture, here is the reuersion reuested, and yet the discontinuance remained at the Common Law.

(d) 17.Ass.p.60.19.Ass. 43. 11.Ass.11.16.Ass.11. 18.E.3.45.

Sect. 626.

¶ EN meisme le manner est, lou terres sont dones a vn hõe en taile, le remainder a vn auter en fee, et le tenāt en taile enfeoffa celuy, que est en le remainder, a auer et tener a luy, et a ses heires, ceo nest pas discontinuance, Causa quā supra.

IN the same manner is it, where lands are given to a man in taile, the remainder to another in fee, and the tenant in taile enfeoffe him that is in the remainder, To have and to hold to him & to his heires, this is no discontinuance, *Causa qua supra.*

¶ *LE remainder a vn auter.* Here it appeareth that (as hath beene said in case of a reuersion) the remainder must be immediately expectant vpon the estate taile.

Sect.

Sect. 627.

ITem, ſi vn Abbe ad vn Reuerſion ou Rent ſeruice, ou Rent charge, et voile graunter cel reuerſion, ou Rent ſeruice, ou Rent charge a vn auter en fee, et le tenant atturna, &c. ceo nē pas diſcontinuance.

ALſo if an Abbot hath a Reverſion, or a Rent ſervice, or a Rent charge, and he will grant this Reverſion, or Rent ſervice, or Rent charge to another in Fee, and the Tenant attorne, &c. this is no diſcontinuance.

Of Inheritances that lie in Grant, ſufficient hath beene ſaid before.

Sect. 628.

EN meſme le manner lou Abbe eſt ſeiſie dun Aduowſon, ou de tiels choſes que paſſont per voy de grant ſans liuerie de ſeiſin, &c.

IN the ſame manner where an Abbot is ſeiſed of an Advowſon, or of ſuch things which paſſe by way of Grant without Liverie of ſeiſin, &c.

332 a. HEre it appeareth, (as hath beẽ ſaid) That an Aduowſon doth not lie in Liuerie, but in Grant.

Sect. 629.

ITem, ſi Tenant en Taile leſſa ſa terre a vn auẽ pur terme de vie, et puis il graunta en fee le Reuerſion a vn auter, et l'tenant atturna, & puis le tenant a terme de vie aliena en fee, et le grantee de reuerſion entra, &c. en le vie le Tenant en le Taile, et puis le Tenant en le Taile moruſt, ſon Iſſue ne poit enter, mes eſt mis a ſon Briefe d' Formedon, pur ceo que le Reuerſion en Fee ſimple que le grauntor auoit per le grant del tenant en le Taile fuit executé en le vie de meſme le tenaunt en le Taile, et pur ceo eſt vn diſcontinuance en fee, &c.

ALſo if Tenant in Tayle letteth his Land to another for life, and after he granteth in Fee the Reverſion to another, and the Tenant attorne, and after the Tenant for life alien in Fee, and the Grantee of the Reverſion enter, &c. in the life of the Tenant in Taile, and after the Tenant in Taile dieth, his Iſſue ſhall not enter, but is put to his Writ of *Formedon*, becauſe the reverſion in Fee ſimple which the Grantor had by the Graunt of the Tenant in Tayle, was executed in the life of the ſame Tenant in Tayle, and therefore it is a diſcontinuanee in Fee, &c.

Of this ſufficient hath beene ſaid before. 333 b & Lit. § 621. Sect.

Sect. 630.

CEt nota que aſcuns font diſcontinuances pur terme de vie. Sicome Tenaunt en le taile fait vn Leaſe pur terme de vie, ſauant le reũſion a luy, auxy longement que le reuerſion eſt al tenant en taile, ou a ſes heires, ceo neſt diſcontinuance, forſque durant la vie le tenant a terme de vie, &c. Et ſi tiel tenant en taile dona les tenements a vn auter en taile, ſauant le reuerſion, donques ceo eſt diſcontinuance durant le ſecond taile, &c.

AND note that ſome make diſcõtinuãces for terme of life. As if Tenant in Tayle make a Leaſe for life, ſaving the reverſion to him, as long as the Reverſion is to the Tenaunt in Tayle or to his Heyers: This is no diſcontinuance but during the life of Tenant for life, &c. And if ſuch Tenant in Taile giveth the lands to another in Taile, ſaving the Reverſion, then this is a Diſcontinuance during the ſecond Tayle, &c.

CThis is manifeſt, and hath beene handled before, and needeth no explanation, onely this is to be obſerued, where Littleton putteth hereafter cases of Diſcontinuances by Feoffement, &c. he hath a double entendment: Firſt, by Feoffement or by any other Conueyance which may make a Diſcontinuance. Secondly, (&c.) implieth a Diſcontinuance by a gift in Taile, or a Leaſe for life, &c.

Sect. 631.

CMES lou le tenant en tayle fait vn leaſe pur terme dans, ou pur terme de vie, le remainder a vn auter en fee, et deliuer̃ liuerie de ſeiſin accordant ceo eſt diſcontinuance en fee, pur ceo que le Fee ſimple paſſa per force de liuerie de ſeiſin, &c.

BUt where the Tenant in Tayle maketh a Leaſe for yeares or for life, the remainder to another in Fee, and delivereth Liverie of Seiſin accordingly, this is a Diſcontinuance in Fee, for that the fee ſimple paſſeth by force of the Liverie of Seiſin, &c.

CThis is euident alſo, and herof ſufficient hath beene ſpoken before.

Sect. 632.

CET eſt aſcauoir q̃ aſcuns tiels diſcontinuances ſont fait ſur condition, &c. et pur ceo que les conditions ſont enfreints, &c. ou pur

AND it is to be underſtood, That ſome ſuch Diſcõtinuances are made upon Condition, &c. and for that the conditions be broken, &c. or for

CDIſcontinuances fait ſur Condition, &c. Here is to be vnderſtood a diuerſitie betweẽ a Condition indeed, whereof Littleton here ſpeaketh, and a Condition in Law, wherof ſomewhat hath beẽ ſaid before in this Chapter. viz.

viz. where the Fem is tenant for life, and the husband maketh a Feoffment in fee, and the Lessor entreth for the Condition in Law.

¶ *Conditions sont enfrients, &c.* Here is implied, or any cause given either by disability of the feoffees, or by any conditiō performed on the part of the feoffor, or otherwise, whereby the state is in any sort auoided.

¶ *Come si le Baron soit seisie de certain terre en droit sa feme, &c.* Here it appeareth, That for the Condition broken the heire of the husband may enter, for albeit no right descend from the husband to his heire, yet the title of entry by force of the Condition which the husband created vpon the feoffment, and reserued to him and his heires, doth descend to his heire, and Littleton saith truly, That so it hath beene adiudged.

4.H.6.1.9.H.7.24.b. Lib.8.fo.43,44. Whitinghams case.

¶ *Sur le heire,* Nota, When the heire in this case hath entred for the condition broken, and hath auoided the Feoffment, the estate of the heire vanisheth away, and presently the Estate vesteth in the Fem or her heires, without any entry or claime by her or them, for the heire entreth in respect of the condition, vpon the reall Contract, and not of any right, as hath beene said. and if the husband himselfe had re-entred, the state had vested in his wife: And therfore where Littleton and our Bookes say, That the wife shal enter vpon the heire, the meaning is, that after the re-entry of the heire she may enter.

Whitinghams case vbi supra.

auters causes, solonque le course de la ley, tiels estates sont defeates, donques sont les Discontinuances defeates, et ne tollent aicun home per force de eur, de son entrie, &c. Come si le Baron soit seisie de certre en droit sa Feme, et fait Feoffement en fee sur condition, et deuie, si le heire apres enter sur le feoffee pur le Condition enfreint, lentrie la Feme est congeable sur le heire, pur ceo que per lentrie del heire le discontinuance est defeat, come est adiudge.

other causes, according to the course of Law such estates are defeated, then are the Discontinuances defeated, & shall not by force of thē take any man from his entrie, &c. As if the husband be seised of certaine land in right of his wife, and maketh a Feoffment in Fee upon condition, and dieth, if the Heire after enter upon the feoffee for the conditiō broken, the entrie of the wife was cōgeable upon the heire, for that by the entry of the heire the discontinuance is defeated, as is adjudged.

Sect.633.

Whitinghams case vbi supra.

¶ The reason here rendred by Littleton, is, for that the husband cannot enter in his owne right, but in the right of his wife, and the heire of the husband cannot enter, for no right or title descends vnto him, and the wife in this case shall take benefit of the nonage of her husband, & enter into the land.

If an Infant bee Tenant for another mans life, and make a Feoffement in fee, and Cestuy que vie dieth, the Infant himselfe shal not enter, because he hath no right at all.

¶ Item, si Feme Inheritrix q̄ ad vn Baron, quel Baron est deins age, et il est eant deins age fait vn Feoffment de les Tenements son fee en fee, et morust, il ad este question, si la fee poit enter, ou non, &c. Et il semble a ascuns, que lentry la Feme

Also if a Woman Inheritrix hath a husband who is within age, and hee being within age maketh a Feoffement of the Tenements of his wife in Fee, and dieth, it hath beene a question, if the Wife may enter or not, &c. And it seemeth to some, that the

feme apres la mort sa baron, est congeable en cest cas. Car quant sa baron feasoit tiel feoffment, &c. il puissoit biẽ enter, nient contristeãt tiel feoffment, &c. durãt la couerture, et il ne puissoit enter en son droit demesne, mes en le droit la feme, Ergo tiel droit que il auoit dentrer en droit sa fem, &c. cest droit dentrer demurt al feme apres son decease.

entrie of the wife after the death of her Husband is congeable in this case. For when her Husband made such feoffment, &c. he might well enter notwithstanding such feoffment, &c. during the coverture, and he could not enter in his owne right but in the right of his wife, *Ergo* such right as hee had to enter in the right of his wife, &c. this right of entrie remayneth to the wife after his decease.

If the husband within age take to wife feme tenant in taile generall, and the husband make a gift in taile and dieth within age, in this case the wife may enter, as Littleton here holdeth, or the heire of the husband in respect of the new reuersion descended vnto him may enter. But if the heire enter, presently thereupon his estate vanisheth. If tenant in taile being within the age of one and twenty years make a feoffment in fee, and after is attainted of felony and dieth, the entry of the issue is not lawfull, for his entry is not lawfull in respect of his estate onely, but of his bloud also which is corrupted, and therefore in that case he is driuen to his Formedon. 14.E.3.Bre.282. 14.E.3. Dum fuit infra ætatem. 6. F.N.B.192.

If husband and wife be both within age, and they by Deed indented ioyne in a feoffment reseruing a rent, the husband dieth, the wife may enter or haue a Dum fuit infra ætatem. But if she were of full age, she shall not haue a Dum fuit infra ætatem, for the nonage of her husband, albeit they be but one person in Law.

Sect. 634.

ET il y ad ẽe dit, que si deux ioyntenants esteants deins age, font vn feoffment en fee, et lun des enfants deuy, et lauter survesquist, entant que les ambideux enfants puissont ent ioyntment en lour vies, cel droit accruist tout a luy que survesquist, et pur ceo celuy que survesquist poit enter en lentiertie, &c. Et aury lheire le baron que fist le feoffment deins age ne poit enter, &c. pur ceo que nul droit discendist a tiel heire en le cas auantdit, pur ceo que le baron nauoit vnques riens forsque en droit de sa feme, &c.

AND it hath beene said, that if two Ioyntenants being within age make a feoffment in fee and one of the Infants die, and the other surviveth, in as much as both the Infants might enter joyntly in their lives, this right accrueth all to him which surviveth, and therefore hee that surviveth may enter into the whole, &c. And also the heire of the husband which made the feoffment within age cannot enter, &c. because no right descendeth to such heire in the case aforesaid, for that the husband had never any thing but in right of his wife, &c.

POet enter en lentiertie, &c. And the reason hereof is implied in this (&c.) that they may ioyne in a Writ of right, and therefore the right shall survive. But they cannot ioyne in a Dum fuit infra ætatem, because the nonage of the one is not the nonage 8.E.2.Bre. 851. 6.E.3.4. 9.H.6.6. 19.H.6.6. 29.H.6.42. 34.H.6.31. F.N.B.192.

nonage of the other. In this caſe if one Joyntenant had made a feoffment in fée and died, the right ſhould not haue ſuruiued, for the Joynture was ſeuered for a time. If two Joyntenants be, and the one is of full age, and the other within age, and both they make a Feoffment in fée, and he of full age dieth, the Infant ſhall enter, or haue a Dum fuit infra ætatem, but for the moitie.

See of this in the Chapter of Ioyntenants.

Sect.635.

CEt aury quant vn enfant fait vn feoffment eſteant deins age ceo ne luy greeuera ne ledra, mes que il poit enter bien, &c. car ceo ſerroit encounter reaſon, que tiel feoffment fait per celuy que ne fuit able de faire tiel feoffment, greeuera ou ledera auter, de toller eur de lour entre, &c. Et pur ceux cauſes il ſemble a aſcuns, que apres la mort de tiel baron iſſint eſteant deins age al temps de le feoffment, &c. que ſa feme bien poit enter, &c.

AND alſo when an infant make a feoffment being within age, this ſhall neither greiue nor hurt him, but that bee may well enter, &c. for it ſhould be againſt reaſon that ſuch feoffment made by him that was not able to make ſuch a feoffment, ſhall greive or hurt another to take them from their entry, &c. And for theſe reaſons it ſeemeth to ſome, that after the death of ſuch huſband ſo being within age at the time of the feoffment, &c. that his wife may well enter, &c.

CMEs que il poet enter bien, &c. Here is implied that he might enter either within age, or at any time after full age, & likewiſe after his death his heire may enter.

Bract.fol.14. Britton fol.88.a. Fleta lib.3.cap.3.

Meliorem enim conditionem facere poteſt minor, deteriorem nequaquam.

Nota. A ſpeciall heire ſhall take aduantage of the infancie of the Anceſtor. As if Tenant in taile of an Acre of the cuſtome of Gauelkind make a feoffment in fee within age, & dieth, the youngeſt ſonne ſhall auoid it, for he is priuie in blood, and claimeth by diſcent from the Infant.

And ſo if Tenant in taile to him and the heires females of his bodie make a feoffment in fee and dieth within age, hauing iſſue a Sonne and a Daughter, the Daughter ſhall auoid the feoffment. And ſo note that a cauſe to enter by reaſon of Infancie is not like to Conditions, Warranties and Eſtopples, which euer deſcend to the heire at the Common Law.

The reſidue of this Section vpon that which hath beene ſaid is euident.

Sect. 636.

CSVrrender.

Surſum reddi-tio properly is a yeelding vp of an eſtate for life or yeares to him that hath an immediate eſtate in reuerſion or remainder, wherein the eſtate for life or yeares may growne by mutuall agréement betweene them.

3 Co. 64.

CItem, ſi feme enheritrix prent baron, et ent iſſue fits, et l' baron mozuſt, & el prent auter baron, et le ſecond baron leſſa la terre que il ad en droit ſa feme a vn auter

ALſo if a woman inheritrix taketh huſband, and they have iſſue a ſonne, and the huſband dieth, & ſhe takes another huſband and the ſecond huſband letteth the Land which he

ter pur terme de sa vie, et puis la feme morust, et puis le tenant a terme de vie surrendist son estate a le second baron, &c. Quære si le fits le feme poit enter en cest cas sur le second baron durant la vie le tenant a terme de vie, &c. Mes il est cleere ley, q̃ apres la mort le tenant a terme de vie, le fits la feme poit enter, pur ceo que le discontinuance que fuit tantsolement pur terme de vie, est determine, &c. per la mort de mesme le tenant a terme de vie.

hath in right of his Wife to another for terme of his life, and after the wife dieth, and after the tenant for life surrendreth his estate to the second husband, &c. *Quære* if the sonne of the wife may enter in this case upon the second husband during the life of tenant for life, &c. but it is cleere Law, that after the death of the Tenant for life the son of the wife may enter, because the Discontinuance which was only for terme of life, is determined, &c. by the death of the same Tenant for life.

Note there be three kinde of Surrenders, viz. a Surrender properly taken at the Common Law, which is here before described, and whereof Littleton speaketh. Secondly, a Surrender by custome of lands holden by Copy, or of customary estates whereof you haue read before, Sect. 74. and a Surrender improperly taken (as appeare before, Sect. 550.) of a Deed. And so of a Surrender of a Patent, and of a Rent newly created, & of a fee simple to the King.

2. Eliz. Dier. 176 14. H. 7. 3. 27. Ass. 37. 49. E. 3. 2. 11. H. 4. 2. 12. H. 4. 21. 13. H. 4. 13.

A Surrender properly taken is of two sorts, viz. a surrender in Deed, or by expresse words, (whereof Litleton here putteth an example) and a surender in Law wrought by consequent by operation of Law. Littleton here putteth his case of a Surrender of an estate in possession, for a Right cannot bee surrendred. And it is to be noted that a surrender in Law is in some cases of greater force, than a surrender in Deed. As if a man

14. H. 8. 15. 37. H. 6. 17. 21. H. 7. 6. 40. E. 3. 24. 31. Ass. 26. 50 E. 3. 6. 44. Ass. 3. 35. H. 8. Dier 37. 8. Ass. 20. 4. Ma. Dier. 142. 11. Eliz. Dier 280.

6. H. 7 9. 37. H. 6. 17. 21. H. 7. 6. 14. H. 7. 4. Lib. 6. f. 69 Sir Moyle Finches case.

make a Lease for yeares to begin at Michaelmasse next, this future interest cannot be surrendred, because there is no Reuersion wherein it may drowne, but by a Surrender in Law it may be drowned. As if the Lessee before Michaelmasse take a new Lease for yeares either to begin presently, or at Michaelmasse, this is a Surrender in Law of the former Lease, Fortior & æquior est dispositio legis quam hominis.

Also there is a surrender without Deed, whereof Littleton putteth here an example of an estate for life of lands, which may be surrendred without Deed, and without Liuery of seisin, because it is but a yeelding, or a restoring of the estate againe to him in the immediate reuersion or remainder, which are alwayes fauoured in Law. And there is also a surrender by deed, and that is of things that lie in grant, whereof a particular estate cannot commence without Deed, and by consequent the estate cannot be surrendred without Deed. But in the example that Littleton here putteth, the estate might commence without Deed, and therefore might bee surrendred without Deed. And albeit a particular estate be made of lands by Deed, yet may it be surrendred without Deed: in respect of the nature and qualitie of the thing demised, because the particular estate might haue beene made without Deed: and so on the other side. If a man be Tenant by the Courtesie, or Tenant in Dower of an Aduowson, Rent or other thing that lie in grant, albeit there the estate begin without Deed, yet in respect of the nature and qualitie of the thing that lies in grant, it cannot be surrendred without Deed. And so if a Lease for life be made of lands, the Remainder, for life, albeit the Remainder for life began without Deed, yet because Remainders and Reuersions though they be of lands are things that lie in grant, they cannot be surrendred without deed. See in my Reports plentifull matter of Surrenders.

19. H. 6. 33. 27. Ass. 46. 14. H. 7. 4. 1 H 6. 1. Pl. Com 541.

¶ *Quære si le fits la feme poet enter, &c.* Here Littleton maketh a Quære, So as graue and learned men may doubt without any imputation to them, for the most learned doubteth most, and the more ignorant for the most part are the more bold and peremptory.

It is holden of some, that after the surrender the issue in taile during the life of Tenant for life may enter, for that hauing regard to the issue, the state for life is drowned, and consequently the inheritance gained by the Lease is by the acceptance of the surrender banished and gone, as if tenant in taile make a Lease for life, whereby he gaineth a new reuersion (as hath

bene said) if Tenant for life surrender to the Tenant in taile, the estate for life being drowned, the reuersion gained by wronge is banished and gone, and he is tenant in taile againe against the opinion Obiter of Portington 21.H.6.53.

21.H.6.53.

But herein are two diuersities worthy of obseruation. The first is, that hauing regard to the parties to the surrender, the estate is absolutely drowned, as in this case betweene the Lessee and the second Baron. But hauing regard to strangers, who were not parties or priuies thereunto, lest by a voluntarie surrender they may receiue prejudice touching any right or interest they had before the surrender, the estate surrendred hath in consideration of Law a continuance. As if a Reuersion be granted with warrantie and Tenant for life surrender, the Grantee shall not haue Execution in value against the Grantor who is a stranger during the life of Tenant for life, for this surrender shall worke no prejudice to the Grantee who is a stranger.

45.E.3.13. 5.H.5.9. 2.E.4.18.

So if Tenant for life surrender to him in reuersion being within age, he shall not haue his age, for that should be a prejudice to a stranger, who is to become Demandant in a reall action.

40.E.3.13. 9.E.4.18. 1.H.6.1. 24.E.3.77. 5.H.5.8.26.Ass.38. 7.H.6.2.b.

If Tenant for life grant a Rent charge, and after surrender, yet the rent remaineth, for to that purpose he commeth in vnder the charge. Causa qua supra.

If a Bishop be seised of a Rent charge in fee, the Tenant of the land enfeoffe the Bishop and his Successors, the Lord enter for the Mortmain, he shall hold it discharged of the rent, for the entrie for the Mortmaine affirmeth the alienation in Mortmaine, and the Lord claimeth vnder his estate, but if Tenant for life grant a Rent in fee, and after infeoffe the Grantee, and the Lessor enter for the forfeiture, the rent is reuiued, for the Lessor doth claime aboue the Feoffement. But if I grant the reuersion of my Tenant for life to another for terme of his life, and Tenant for life attorne, now is the Waste of Tenant for life dispunishable. Afterwards I release to the Grantee for life and his heires, or grant the reuersion to him and his heires, now albeit the Tenant for life be a stranger to it, yet because he attorned to the Grantee for life, the estate for life which the Grantee had, shall haue no continuance in the eye of the Law as to him, but he shall be punished for waste done afterward.

48.E.3.16. dub' 273.a.

The second diuersitie is, that for the benefit of an estranger the estate for life is absolutely determined. As if he in the reuersion make a Lease for yeares or grant a Rent-charge, &c. and then the Lessee for life surrender, the Lease or rent shall commence maintenant. So in the case of Littleton, first betweene the Lessee, and the second husband, the estate for life is determined, and secondly for the benefit of the issue it shall be so adiudged in Law. Here note a diuersitie, when it is to the prejudice of a stranger, and when it is for his benefit.

If a man maketh a Lease to A. for life, reseruing a rent of 40. shillings to him and his heires, the remainder to B. for life, the Lessor grant the reuersion in fee to B. A. attorne, B. shall not haue the rent, for that although the fee simple doe drowne the remainder for life betweene them, yet as to a stranger it is in esse, and therefore, B. shall not haue the rent, but his heire shall haue it.

Adiudge Mich.16.& 17. Eliz.int.Turner Pl.& Gray det.in electione firmæ in Communi banco Rot.945.Sir Francis Flemings case.

A Master of an Hospitall being a sole Corporation, by the consent of his brethren make a Lease for yeares of part of the possessions of the Hospitall, afterwards the Lessee for yeares is made Master, the terme is drowned, for a man cannot haue a terme for yeares in his owne right, and a freehold in auter droit to consist together (as if a man Lessee for years take a feme Lessor to wife.) (a) But a man may haue a freehold in his owne right and a terme en auter droit. and therefore if a man Lessor take the feme Lessee to wife, the terme is not drowned but he is possessed of the terme in her right during the Couerture. (b) So if the Lessee make the Lessor his Executor, the terme is not drowned. Causa qua supra.

(a)6.H.4.7.Pl.Com.418.

(b)32.H.8.Br.surrender 52.

But if it had beene a Corporation aggregate of many, the making of the Lessee Master had not extinguished the terme, no more than if the Lessee had beene made one of the brethren of the Hospitall.

Sect. 637.

Vide Sect.658.

CVN *foits.* Here it is to bee obserued that it is not necessary that the Tenant in taile bee euer seised of an estate taile at the time when the Discontinuance of the whole estate is begun, as if Tenant in taile make a lease

CNOta que vn estate taile ne poit este discontinue, mes la ou cestuy que fait l' discontinuance fuit vnfoits seisie per force de l' taile, sinon que

NOte, that an estate taile cannot bee discontinued, but there where hee that makes the discontinuance was once seised by force of the taile, vnles it be

que ſoit per reaſon de garrantie, &c. Come ſi ſoit aiel, pier, & fits, et layel ſoit tenant en taile, et eſt diſſeiſie per le pier que eſt ſon fits, et le pier fait vn feoffment de ceo ſans garranty et deuie, et puis laiel deuie, l' fits bien poit enter ſur le feoffee, pur ceo que ceo ne fuit pas diſcontinuance, entant que le pier ne fuit ſeiſie per force de le taile al temps del feoffm̃t, &c. mes fuit ſeiſie en fee per le diſſeiſin fait al ayel.

by reaſon of a warrãty, &c. As if there be grãdfather, father, & ſon, & the grandfather is tenant in taile, & is diſſeiſed by the father who is his ſon, & the father maketh a feoffment of this without warranty & die, & afterwards the grãdfather dies, the ſon may well enter upõ the feoffee, becauſe this was no diſcontinuance, inaſmuch as the father was not ſeiſed by force of the entaile at the time of the feoffment, &c. but was ſeiſed in fee by the diſſeiſin of the grandfather.

for life, whereby he gaineth, as hath bene ſaid, a fee ſimple by wrong, in this caſe if he grant the reuerſion in fee, and the Leſſee dieth, the whole eſtate is diſcontinued, and yet at the time of the grant (by which the Diſcontinuance continueth) hee was not ſeiſed by force of the taile, and therefore Litt. materially added theſe words (vn foits) that is, that hee was once ſeiſed by force of the eſtate taile: and ſeeing that (as hath bene ſaid) a Diſcontinuance is a priuation, the rule of Law agreeth well with the rule of Philoſophie, that Omnis priuatio præſupponit habitum, and therefore he cannot diſcontinue that eſtate which he neuer had. f. 620

Vide ſect. 592. 596. 597. 601. 640. 698.

¶ *Sinon que il ſoit per reaſon del garrantie, &c.* For in many caſes a Warrantie added to a conueyance is ſaid to make a diſcontinuance Ab effectu, although he that made the conueyance was neuer ſeiſed by force of the eſtate taile, becauſe it taketh away the entrie of him that right hath, as a Diſcontinuance doth. As if Tenant in taile be diſſeiſed and dieth, and the iſſue in taile releaſe to the Diſſeiſor with warrantie, in this caſe the iſſue was neuer ſeiſed by force of the taile, and yet this hath the effect of a Diſcontinuance by reaſon of the warrantie, and the reaſon hereof appeareth before in this Chapter. f.

9. E. 4. 19. 12. E. 4. 11. 21. E. 4. 97. f. 601

¶ *Le fits poet enter.* But if the father that made the feoffment had ſuruiued the Grandfather, he ſhould neuer haue entred againſt his owne feoffment, but albeit the Father had ſuruiued, yet after his deceaſe the Sonne ſhould haue entred for the reaſon here yeelded by Littleton. But if the feoffment had bene with warrantie, then it had wrought the effect of a Diſcontinuance, and therefor Littleton ſaith Sans Garranty, without warrantie.

15. E. 4. Diſcont. 30. & entr. Cong. 21. 21. E. 4. 97. 9. H. 4. 19. 39. H. 6 45. 21. H 6. 52. 11. E. 4 11. 1 Mar. Dyer. 98

Sect. 638.

¶ Item, ſi Tenant en Taile fait vn leaſe a vn auter pur terme de vie, et le Tenant en taile ad Iſſue et deuie, et le reuerſion deſcendiſt a ſon Iſſue, et puis liſſue granta le reuerſion a luy diſcendue a vn auter en fee, et le tenant a terme de vie attourna & deuie, et le Grantee del reuerſion enter, &c. et eſt ſeiſie en fee en la vie del Iſſue, et puis iſſue en le taile ad iſſue fits et deuie, il ſemble

ALſo if Tenant in Taile make a Leaſe to another for terme of life, and the Tenant in Tayle hath Iſſue and dieth, and the Reverſiõ deſcendeth to his iſſue, and after the Iſſue granteth the reverſion to him deſcended, to another in Fee, and the Tenant for life atorne and die, and the Grantee of the reverſion enter, &c. and is ſeiſed in Fee in the life of the Iſſue, and after the Iſſue in Taile hath

ble que ceo nest pas discontinuance a le fits, mes que le fitz poit enter, &c. pur ceo que son pier a que le reuersion de Fee simple discendist, &c. nauoit vnques riens en la terre, per force de le Taile, &c.

If Isue a son and dieth, it seemes that this is no discontinuance to the son, but that the son may enter, &c. for that his father, to whom the reversiō of the fee simple descended, had never any thing in the land by force of the entaile, &c.

15.E.4.Discont.30 43. Ed.3.6.21, H.6 52. 4.H. 7.17.

21.H.6.52 53.

¶ Of this opinion is Littleton in our Bookes.

¶ *Le Grantee del reuersion enter, &c.* Here it is to bee vnderstood and observed, That in this case of the grant of the Reuersion Littleton doth not say Sans garrantie, because if a warranty had been added, it had wrought no discontinuance, for that as hath beene said) the Discontinuance in iudgement of Law was but for life: but when the addition of a warrantie doth worke a Discontinuance, then Littleton saith, Sans garrantie, as you may obserue often in this Chapter.

Sect. 639.

¶ Car si home seisie en droit sa feme, lessa mesme la Terre a vn auter pur terme de vie, ore est le reuersion de fee simple a le Baron, &c. Et si le Baron morust, viuant sa feme et le Tenant a terme de vie, et le reuersion discendist al heire le Baron, si le heire le Baron grant le reuersion a vn auter en fee, et le tenant atturna, &c. et puis le tenaunt a terme de vie morust, et le Grauntee del Reuersion en cel case enter: En cest case ceo nest pas Discontinuance a le Feme, mes la feme bien poit enter sur le Grantee, &c. pur ceo que le grantor nauoit riens al temps del Graunt, en le droit la Feme, quant il fist le graunt del Reuersion.

For if a man seised in the right of his Wife, letteth the same land to another for terme of life, now is the reversion of the Fee Simple to the Husband, &c. and if the Husband dieth, living his Wife; and the Tenant for life, and the reversion descend to the heire of the Husband, if the Heire of the Husband grant the reversiō to another in fee, and the Tenant attorne, &c. and afterwards the Tenant for life dieth, & the grantee of the reversion in this case enter: In this case this is no Discontinuance to the wife, but she may well enter upon the grantee, &c. because the grantor had nothing at the time of the Graunt, in the right of his Wife when hee made the Graunt of the Reversion.

14.E.3 Discont.5.18. Ass. p.2.18.E.3 54. 38.E.3. 32. 22.H.6.24. 21.H.6. 52.53.15.E.4. Discont.30

¶ *Car si home seisie en droit sa feme, lessa, &c.* Here Littleton putteth his case where the Baron only makes a Lease for life, for if he and his wife joyne in a Lease by Deed, there the Reuersion is not discontinued. See before, Sect. 620. More need not to be said hereof, in respect the like case of Tenant in taile hath beene explained before.

Sect.

Sect. 640,641.

CEt iſſint il ſemble, coment que homes queux ſont inheritables per force de le Taile, et ils ne fueront vnques ſeiſies per force de meſme le Taile, que tiel feoffements ou grants p eux fait ſans clauſe de Garrantie, nē pas diſcontinuance a lour iſſues apres lour deceaſe, mes que lour Iſſues poyent bien enter, &c. coment que ceux queux fierent tielz grants en lour vies fueront forbarres dentrer per lour Fait demeſme, &c.

AND ſo it ſeemeth, that men which are inheritable by force of an Entaile, and never were ſeiſed by force of the ſame entaile, that ſuch Feoffments or grants by them made without clauſe of warrantie, is no diſcontinuance to their Iſſues after their deceaſe, but that their Iſſues may well enter, &c. albeit they which made ſuch Grants in their lives were forebarred to enter by their owne act, &c.

Sect. 641.

CEt ſi le tenant en Taile ad iſſue deux fits, et leigne diſſeiſiſt ſon pier, et ent fait feoffment en fee ſans clauſe de Garrantie, et deuia ſans Iſſue, et puis le pier deuie, le puiſn̄ fits poit bien enter ſur le feoffee, pur ceo que le feoffment ſon eigne Frere ne poit eſtre diſcontinuance, pur ceo que il ne fuit vnques ſeiſie per force de meſme le taile. Car il ſemble encounter reaſon, que per matter en fait, &c. ſans clauſe de Garrantie, home poit diſcontinuer vn Fait, &c. que ne fuit vnques ſeiſie per force de meſme le Taile.

AND if Tenant in Taile hath Iſſue two Sonnes, and the eldeſt diſſeiſeth his Father, & thereof maketh a Feoffement in Fee, without clauſe of Warrantie, and die without iſſue, and after the father die, the yongeſt ſon may well enter upon the Feoffee, for that the Feoffement of his elder brother cannot be a diſcontinuāce, becauſe he was never ſeiſed by force of the ſame Tayle. For it ſeemeth to be againſt reaſon, that by matter in fact; &c. without clauſe of Warrantie, a man ſhould diſcontinue a Deed, &c. that was never ſeiſed by force of the ſame Taile. Taile

CNote, there alſo in the two Sections appeareth, That (as hath beene ſaid before) a Warrantie, though he were neuer ſeiſed by force of the Taile may worke the effect of a Diſcontinuance. Vide Sect. 581. 596. 597. 601. 658.

C *Home poet diſcontinuer vn fait, &c.* This is miſtaken, and ſhould be, Home poet diſcontinuer va taile, and ſo is the Originall.

Sect.

Sect.642.

¶ Nota ſi ſoit Sñr et tenant, et le tenant dona les tenements a vn auter en taile, le remainder a vn auter en fee, et puis le tenant en taile fait vn leas a vn home pur terme de vie, &c. ſauant le reuerſion, &c. & puis granta le reuerſion a vn auter en fee, et le tenant a terme de vie atturna, &c, et puis le grantee del reuerſion mozuſt ſans heire, ozs meſme le reuerſion deuient al ſeignioz per voy deſcheate. Si en ceſt cas, le tenant a terme de vie deuiaſt, et le Seignioz per force de ſon eſcheate enter en la vie le tenant en le taile, et puis le tenant en le taile mozuſt, il ſemble en ceo cas que ceo neſt pas diſcontinuance al iſſue en le taile ne a celuy en le remainder, mes que il poit bien enter pur ceo que le Seignioz eſt eins per voy deſcheat, et nemy per le tenant en le taile, &c. Mes ſecus eſſet, ſi le reuerſion vſt eſte execute en le grantee en le vie le tenant en le taile, car adonque vſt le grantee eſte eins en les tenements per le tenant en le tayle, &c.

NOte if there be Lord and Tenant, and the Tenant giveth lands to another in taile, the remainder to another in Fee, and after the tenant in taile make a leaſe to a man for terme of life, &c. ſaving the reverſion, &c. and after granteth the reverſion to another in fee and the tenant for life attorne, &c. and after the Grantee of the reverſion die without heire, now the ſame reverſion commeth to the Lord by way of eſcheat. If in this caſe the Tenant for life dieth and the Lord by force of his eſcheate enter in the life of Tenant in taile, and after the Tenant in taile dieth, it ſeemeth in this caſe that this is no diſcontinuance to the iſſue in taile, nor to him in the remainder, but that hee may well enter, becauſe the Lord is in by way of eſcheate, and not by the Tenant in taile, but otherewiſe it ſhould bee, if the reverſion had beene executed in the Grantee, in the life of Tenant in taile, for then had the Grantee beene in the Tenements by the tenant in taile, &c.

Vide Sect.620.

¶ The reaſon of this caſe is here rendzed (as befoze is was in this Chapter) that albeit the reuerſion be executed in the Lozd by eſcheat in the life of Tenant in taile, yet becauſe he is not in by the Tenant in taile but by eſcheat, it wozketh no Diſcontinuance. But if it had beene executed in the life of Tenant in taile in the Gzantee which was in by Tenant in taile, then the Lozd by eſcheat ſhould haue taken aduantage of it. But of this ſufficient hath beene ſaid befoze in this Chapter.

Lib.1.fol.136.
Lib.3.fol.2,63.

Sect.643,644,645.

¶ P*Arcel de ſon Glebe, &c.* In whom the fee ſimple of the

¶ Item ſi vn parſon dun Eſgliſe, ou vn Vicar dun Eſgliſe

ALſo if a Parſon of a Church or a Vicar of a Churh alien

Esglise, alien certaine terres, ou tenements parcel de son glebe, &c. a vn auter en fee, et mozust, ou resigne, &c. son successor poit bien ent, nient contristeant tiel alienation, come est dit ẽ vn Nota 2.H.4. Terme Mich. quod sic incipit.

certaine Lands or Tenements parcell of his Glebe, &c. to another in fee, and die or resigne, &c. his successor may well enter notwithstanding such alienation, as is said in a *Nota* 2.*H*.4. *Termino Mich.* which beginneth thus.

Sect. 644.

ENOta quod dictum fuit pro lege en vn briefe de accompt portr per vn master dun college, vers vn Chapleine, que si vn Parson, ou vn Vicar, graunt certaine terre, quel est de droit son Esglise a vn auter & deuie, ou permute, le successor poit enter, &c. Et ieo croy que la cause est, pur ceo que le Parson, ou Vicar, que est seisie, &c. come en droit de son Esglise, nad pas droit de fee simple en les tenements, et le droit de fee simple de ceo demurt en alcun auter person, et pur cel cause son succes. poit bien enter, nient contristeant tiel alienation, &c.

Nota quod dictum fuit pro lege, in a Writ of Account brought by a Master of a Colledge against a Chaplaine, that if a Parson or Vicar grant certaine Land, which is of the right of his Church to another and die or changeth, the Successor may enter, &c. And I take the cause to bee, for that the Parson or Vicar that is seised, &c. as in right of his Church hath no right of the fee simple in the tenements, but the right of the fee simple abideth in another person; And for this cause his Successour may well enter, notwithstanding such alienation, &c.

glebe, is a question in our Bookes: (a) some hold that it is in the Patron, but that cannot be for two reasons, first, for that in the beginning the land was giuen to the Parson and his Successors. and the Patron is no successor. Secondly, the words of the Writ of Iuris vtrum be, si sit libera Eleemosyna Ecclesiæ de D. and not of the Patron. Some others do hold that the fee simple is in the Patron and Ordinary, but this cannot be for the causes aboue said: & therefore of necessitie the fee simple is in abeyance as Littleton saith. And this was prouided by the prouidence and wisdome of the Law, for that the Parson and Vicar haue Curam animarum, and were bound to celebrate Diuine Seruice, and administer the Sacraments, and therefore no Act of the Predecessor should make a Discontinuance to take away the entry of the Successor, & to driue him to a reall action wherby he should be destitute of maintenance in the meane time, vpon consideration of all our Bookes I obserue this diuersitie, that a Parson or Vicar for the benefit of the Church and of his Successor is in some cases estéemed in Law to haue a fée simple qualified, but to do any thing to the preiudice of his Successor in many cases, the law adiudgeth him to haue in effect but an estate for life, Causæ Ecclesiæ publicis causis æquiparantur, and summa ratio est quæ pro religione facit. And Ecclesia fungitur vice minoris, meliorem facere potest conditionem suam, deteriorem nequaquam.

(a) 8.H.6.24. 12.H.8.8.

Vide Register. 307.a. 45.P.3. tit. Eschange. 12.H.8.9.

Bracton lib.4. fol.226. No. 7

Brit. fol.143.

F.N.B. 19.L.

As a Parson, Vicar, Archdeacon, Prebend, Chantery Priest, & the like may haue an Action of Waste, and in the Writ it shall be said ad exhæredationem Ecclesiæ, &c. ipsius B. or Præbendæ ipsius A.

F.N.B. 55.D. & 57.E.F. 10.H.7.5.

And the Person. &c. that maketh a Lease for life, shall haue a Consimili casu during the

F.N.B.49.l.m n.10.E.3. tit Iuris vtrum-Temps E. 3.Iuris vtrum 14.1.14.E. 3.ibid.4.F.N.B.50. 30.E 3.26. 21.E 3.11. tit.Entrie 10.F.N B.206. F.Regiſtr.237.4.E.4.2. 8.E.3.tit.Entrie.3.7.E.3. 54.55.

the life of the Leſſée and a Writ of entrie ad communem legem after his death, or a Writ Ad terminum qui præteriit, or a quod permittat in the debet, and none can maintaine any of theſe Writs, but a Tenant in fée ſimple or fée tayle.

And a Parſon, &c. may receiue homage, which Tenant for life cannot doe, Temps E.1. Incumbent 19.

(e)F.N.B.49.L.50.2.

(c) Likewiſe a Parſon, &c. ſhall haue a Writ of meſne and a Contra formam feoffamenti.

But a Parſon cannot make a Diſcontinuance as Littleton here teacheth, for that ſhould be to the prædudice of his Succeſſor to take away his entrie, and to driue him to a reall action.

20.E.3.tit.Aid.30.25.E. 3.54. 8 E.3.45.8.H.6.24. 11.H.6.9. 6.E.3.43.43. Aſſ Pl.13.F.N.B.129.

Alſo if a Parſon, &c. make a leaſe for yeares reſeruing a rent and dieth, the leaſe is determined by his death, as if Tenant for life had made a leaſe, no acceptance of the rent by the Succeſſor can make it good. Alſo in a reall action a Parſon, Vicar, Archdeacon, Prebend, &c. ſhall haue aid of the Patron and Ordinarie astenant for life ſhall haue. So as it is euident that to many purpoſes a Parſon hath but in effect an eſtate for life and to many a qualified fée ſimple, but the entire fée and right is not in him, and that is the reaſon that hée cannot diſcontinue the fée ſimple that he hath not, nor euer had, for as it hath beéns ſaid, Omnis priuatio præſupponit habitum. And for the ſame cauſe he cannot haue a Writ of right, nor a Writ of right in his nature, as a writ of Right Sur diſclaimer of cuſtomes and ſeruices, Ne iniuſtè vexes, rationabilibus diuiſis, quo iure, and the like.

Sect. 645.

CAr vn Eueſq̃ poit auer bꝛe de droit de tenements de droit de ſon Eſgliſe, pur ceo que le droit eſt en ſon Chapiter, et le fee ſimple demurrant en luy et en ſ̃ Chapiter. Et vn Deane poit auer bꝛe de droit pur ceo que le droit demurt ẽ luy. Et vn Abbe poit auer briefe de droit, p̃ ceo que le droit demurt en luy, et en ſon couent. Et vn Maſter dun Hoſpitall poit auer briefe de droit, pur ceo que le droit demurt en luy, et en ſes confreres, &c. Et ſic de aliis caſibus conſimilibus. Mes vn parſon ou vn Vicar ne poit auer briefe de droit, &c.

For a Biſhop may have a writ of right of the tenm̃ts of the right of his Church, for that the right is in his Chapiter, & the fee ſimple abideth in him and in his Chapiter. And a Deane may have a writ of right, becauſe the right remaines in him. And an Abbot may have a writ of right for that the right remaines in him & in his covent. And a maſter of an Hoſpitall may have a Writ of right becauſe the right remaineth in him and in his confreres, &c. And ſo of other like caſes. But a Parſon or Vicar cãnot have a writ of Right, &c.

Hic 7.

But here it appeareth by Littleton that ſuch bodies politike or corporate as haue a ſole ſeiſin, and may haue a writ of right for that the fée and right is them (albeit they cannot abſolutely conuey away their Lands, &c. without aſſent of others) may make a Diſcontinuance, as a Biſhop, an Abbot, a Deane, a Maſter of an Hoſpitall, and the like. But this is to bee vnderſtood where a Deane or a Maſter of an Hoſpitall, &c. are ſolely ſeiſed of diſtinct poſſeſſions, for if the bodie that is ſeiſed be aggregate of many, as the Deane and Chapiter, Maſter and Confreres, &c. then the feoffment of the Deane or Maſter is ſo far from a Diſcontinuance as it is a diſſeiſin. See 642. 657

44.E.3.11. 11.H.4.68. 9 E.4.16. 18.E.3 7.6.F. 3.11. 5 E.2.Aid.167. 12. H.4.11. 32.E.3.Aid.39. 38.E.3.19.14.E.3 Iuris vtrum 4.

And theſe that haue the fée and right in them ſhall not haue aid in reſpect of their high and large eſtate, albeit any of them be prælentable: but a Deane that is collatiue ſhall haue aid of the King.

And this is to be obſerued, that the remedie is euer agréable to the right, and therefore the Biſhop, Deane, Maſter of an Hoſpitall, that hath College and common Seale, or the like, ſhall haue a Writ of Right, which is the higheſt remedie, for that they haue the higheſt eſtate.

Here

Here Littleton citeth the Booke Case, Mich.2.H.4. as an authoritie whereupon he groundeth his opinion. And it is to be obserued, that the yeares of H.4. were published before Littleton did write.

But at this day, the Bishop, Deane, Master of an Hospitall, or the like that haue the fee and right in them, as hath beene said, cannot discontinue, neither can they or any Parson, Vicar, Archdeacon, Prebend, or any other hauing any Ecclesiasticall Liuing with assent of Deane and Chapiter, Patron & Ordinary, or the consent of any others make any Lease, Gift, Grant or Conueyance, Estate, Charge or Incumberance to binde his Successor other than for terme of one and twentie yeares, or three liues in possession, whereupon the accustomed Rent or more shall be reserued. These be excellent Lawes, and haue been well expounded for the maintenance of Religion, and the good of Gods Church, for otherwise it is to be feared that holy Church would lose more than it would gaine in these daies. Vide Sect.5.7.593.&c. 1.Eliz.c.18.13.Eliz.c.20. 1.Iacobi cap.3. Lib.1.fo.46. Lib.4.fol.76.& 20. Lib.5.fol.9.& 14. Lib.6.fo.37. Lib.7.fol.8. Lib.11.fol.67.

But where Littleton in this & other Sections make mention of Masters of Hospitals, the Reader must know, that since Littleton wrote, there hath been a great alteration made by diuers Acts of Parliament concerning Hospitals. 37.H.8. 31.H.8 32.H.8. 37.H.8. 1.E.6,&c.

¶ *Master del Hospitall.* These points concerning Hospitals were resolued (e) by the Iustices. (e) Pasch.24.Eliz. The Lord Cheneves case. Lib.2.fol.48,49. Euesque de Canterburies case.

First, That no Hospitall was giuen to the Crowne by the Statute of 27.H.8. nor any Hospitall is within the Statute of 31.H.8. of Monasteries. but only religious and Ecclesiasticall Hospitals, and that no Lay Hospitall was within those Statutes.

Secondly, If vpon the foundation of any lay Hospitall or after it was ordained, That one or diuers Priests should be maintained within the Hospitall to celebrate Diuine seruice to the poore, and to pray for the soule of the Founder, and all Christian soules, or the like, and that the poore of such Hospitall should make the like Orisons, yet such an Hospitall is not within the said Statutes, for the Hospitall is Lay, and not Religious, and all or the most part of ancient Lay Hospitals were founded or ordained after the like sort, and the makers of those statutes neuer intended to ouerthrow workes of Charitie, but to take away the abuse.

Thirdly, That no Hospitall was giuen to the King by the Statute of 37.H.8. but in two cases, where the Donors, Founders or Patrons, &c. had entred and expulsed the Priests, Wardens, &c. betweene the fourth day of Februarie, Anno 27.H.8. and the fiue and twentieth of December, Anno 37.H.8. or where King Henry the eighth by Commission according to that Act should enter and seise the same, but that determined by the death of that King. Lib.1.f.24. Porters case.

Fourthly, That the Statute of 1.E.6. extended not to any Hospitall whatsoeuer either Lay or Religious, as by the same appeareth. Porters case vbi supr. Lib.4.111.113.114.116. In Lamberts case.

And I was of Counsell with the Lord Cheney in this case, which, seeing it may doe good for maintenance of Charitable vses, I thought good summarily to report it, to this I will adde Panis pauperum vita pauperum, qui defraudat eos vir sanguinis est. Ecclesiasticus c.34.ve 22.

Nota, of Hospitals some are Corporations aggregate of many, as of Master or Warden, &c. and his Confreres: some where the Master or Warden hath onely the estate of Inheritance in him, and the Brethren or Sisters power to consent hauing College and Common Seale: some where the Master or Warden hath the state in him but hath no College and common Seale, and such a Master or Warden shall haue a Iuris vtrum: and of these Hospitals some be eligible, some donatiue, and some presentable. 14.E.3.Iuris vtrum.4.

Sect.646.

¶ Mes le pluis haut briefe q̄ ils poient auer est l' briefe de Iuris vtrum, le quel est graund proofe que le droit de fee nest en eux ne en nul autres, &c. Mes le droit de fee simple est en abeiance, &c. ceo est a dire, que il est tantsolement en le remembrance, entendement, & consideration de la ley, &c. Car moy semble que tiel chose

BUt the highest Writ that they can haue is the Writ of *Iuris vtrum*, which is a great proofe that the right of fee is not in them, nor in any others, &c. but the right of the fee simple is in abeiance, that is to say, that it is only in the remembrance, intendment and consideration of 2 Rich 407

choſe et tiel droit que eſt dit en diuers Lieurs eſtre an abeyance, eſt a tant adire en Latyne (ſ.) Talis res, vel tale rect' quæ vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia Legis, & quod alii dixerunt, talē rem aut tale rectum fore in nubib⁹. **Mes ieo ſuppoſe que ils intenderont per ceur parols,** In nubibus, &c. **come ieo aye dit deuant.**

the Law, &c. for it ſeemeth to me, That ſuch a thing, and ſuch a right which is ſaid in divers bookes to be in abeyance, is as much to ſay in Latine, (ſ) *Talis res, vel tale Rectum quæ vel quod non eſt in homine adtunc ſuperſtite, ſed tantummodo eſt, & conſiſtit in conſideratione & intelligentia legis, & quod alij dixerunt, talem rem aut tale rectum fore in nubibus.* But I ſuppoſe, that they meane by theſe words, (*In nubibus, &c.*) as I have ſaid before.

24.E.3.63 Vid. Sect.648. 649.650.651. Vide.Sect.1.

CEN *abeiance.* That is in expectation, of the French word Bayer to expect. For when a Parſon dieth, we ſay that the freehold is in Abeyance, becauſe a Succeſſor is in expectation to take it, & here note the neceſſitie of the true interpretation of words. If Tenant Pur terme dauter vie dieth, the freehold is ſaid to be in Abeyance vntill the occupant entreth. If a man make a Leaſe for life, the remainder to the right heires of I.S. the fee ſimple is in Abeyance vntill I.S. dieth. And ſo in the caſe of the Parſon, the fee and right is in Abeyance, that is, in expectation, in remembrance, entendment or conſideration of Law. 1. In conſideratione ſiue intelligentia legis, becauſe it is not in any man then liuing, and the right that is in Abeyance is ſaid to be In nubibus in the Clouds, and therein hath a qualitie of fame whereof the Poet ſpeaketh:

Virg.4.Æneid. Inſequiturque ſolo, & caput inter nubila condit.

Sect. 647.

CIte, ſi un parſon dun eſgliſe deuie, ore le franktenement del glebe del parſonage eſt en nulluy durant le temps que le parſonage eſt voide, mes in abeiance, ceſtaſcauoir, in conſideration & en le intelligence de le ley, tanque vn auter ſoit fait parſon de meſme leſgliſe, et immediat quant vn auter eſt fait parſon, le franktenement en fait eſt en luy come ſucceſſor.

ALſo if a Parſon of a Church dieth, now the freehold of the glebe of the Parſonage is in none during the time that the Parſonage is voide but in abeiance, *viz.* in conſideration and in the underſtanding of the Law untill another be made Parſon of the ſame Church, and immediately when another is made Parſon, the freehold in Deed is in him as Succeſſor.

CSI *vn Parſon dun Eſgliſe deuie, &c.* Here is of a Biſhop, Abbot, Deane, Archdeacon, Prebend, Vicar, and of euery other ſole Corporation or body politike preſentatiue, electiue, or donatiue, which inheritances put in abeiance are by ſome called Hæreditates jacentes, and ſome ſay: Que le fee eſt en balaunce.

Bract.li.1.c.2.Brit.f.249.

Sect.

Sect. 648.

¶ Item, ascuns peradventure voilēt arguer & dire, que entant que vn parson ove lassent del patron & ordinarie poit grāter vn rent charge hors del glebe del parsonage en fee, & issint charger le glebe del personage perpetualmēt, ergo ils ont fee simple, ou deux, ou vn de eux avoit fee simple al meins. A ceo poit estre respondue, que il est prīciple en le ley, que de chescuns terres il y ad fee simple, &c. en ascun hom, ou autrement le fee simple est en abeyance. Et vn autre prīciple est, Que chescun terre de fee simple poit estre charge de vn Rentcharge en fee per vn voy, ou per auter. Et quant tiel rent est graunt per le Fait le Parson & l' Patron, & Ordinarie, &c. en Fee, nul avera prēiudice ou parde p force de tiel Grant forsque les Grantors en lour vies, & les Heires le Patron, & les successors del Ordinary apres lour decease. Et apres tiel charge, si le

ALso some peradventure wil argue and say, that inasmuch as a Parson with the assent of the Patron and Ordinary, may grāt a rent charge out of the Glebe of the Parsonage in fee, and so charge the glebe of the Parsonage perpetually, *ergo* they have a Fee simple, or two or one of them have a fee simple at the least. To this may bee answered: That it is a Principle in law, That of every land there is a Fee simple, &c. in some bodie, or otherwise the fee simple is in abeyāce. And there is another Principle, that every Land of fee simple may bee charged with a Rēt charge in Fee by one way or other. And when such Rent is granted by the Deed of the Parson, & the Patron, and Ordinarie, &c. in Fée, none shall have prejudice or losse by force of such Grant, but the Grātors in their lives, and the Heires of the Patron, & the successours of the Ordinary after their decease. And after such charge

¶ *Il est vn Principle en la Ley, &c.* Principium, quod est quasi primum caput, from which many cases have their originall or beginning, which is so strong, as it suffereth no contradiction, and therefore it is said in our Books, that ancient Principles of the law (a) ought not to be disputed, Contra negantem principia non est disputandū. That which our Author here calleth a Principle, Sect. 3. & 90. he calleth a Maxime.

(a) 11. H. 4. 9.

Sect. 3 & 90.

Here Littleton in answer to an obiection alleageth two Principles. First,

¶ *Que de chescun terre il y ad Fee simple, &c.* This is perspicuè verū, and needeth no explanation. Secondly,

Max

¶ *Chescun terre de Fee simple poet estre charge en Fee per vn voy ou auter.* Hereby it appeareth, That albeit the right of the Fee simple be in abeyance, yet it may be charged by one way or another. And so it may be aliened in Fee, albeit the right of the fee be in abeyance, or in consideration of Law. And herein is a diversitie worthy the observation to be made, That when the right of Fee simple is perpetually by iudgement of Law in abeyance, without any expectatiō to come in esse, there he that hath the qualified fee concurrentibus his quæ in jure requiruntur, may charge or alien it, as in the case of Parson, Vicar, Prebend, &c. But where the Fee simple is in abeyance, and by possibilitie may every houre come in esse, there the fee simple cannot bee charged vntill it commeth in esse. As if a Lease for life be made, the remainder to the right heires of I. S. the Fee simple cannot be

Max.

charged

charged till I.S. be dead. And ſo is Littleton to be vnderſtood, viz. that either it may be charged in præſenti or in futuro.

¶ *Cheſcun Terre de Fee ſimple.* And ſo it is of Lands entailed, for they may be charged in Fée alſo, for the Eſtate Taile may be cut off by Fine or recouery. Alſo the Eſtate Taile may continue, and yet Tenant in taile may lawfully charge the land and bind the Iſſue in taile. As if a Diſſeiſor make a gift in Taile, and the Donée in conſideration of a Releaſe by the Diſſeiſée of all his right to the Donée, granteth a rent charge to the diſſeiſée and his heires, proportionable to the value of his right, this ſhall binde the Iſſue in Taile: Vide Sect.1. Bridgewaters Caſe: which Lands by the rule of Littleton may be charged: and therefore if the owner of thoſe thirtéene acres grant a Rent charge out of thoſe thirtéene Acres generally, lying in the Meadow of eighteie, without mentioning where they lie particularly, there as the ſtate in the land remoues, the charge ſhall remoue alſo, But ſince our Author wrote, al Eccleſiaſticall perſõs are diſabled to charge in Fée any of their Eccleſiaſticall poſſeſſions, as before hath béene ſpoken of at large.

44.E3.21,22.

Vide Sect.1. Bridgewaters caſe & 59.

Vide Sect.593.

¶ *Et quant tiel rent eſt grant, &c.* This is an excellent interpretation and limitation of the ſaid Principle, viz. That none ſhall haue preiudice or loſſe by any ſuch Grant, but ſuch as are parrie or priuie thereunto, as the Patron and his Heires, the Ordinary and his Succeſſors, and the Parſon and his Succeſſors: which Succeſſors of the Parſon are to be preſented by the Patron or his Heires, and admitted and inſtituted by the Ordinary or his Succeſſors. The like is to be ſaid of an Archdeacon, Prebend, Vicar, Chauntrie Prieſt, and the like.

31.E.1.tit.Grant.90. 3.R.2.Annuit.53.

Parſon deuie, ſ̃ ſucceſſour ne poit vener a le dit Eſglíſe ď eſtre Parſon de meſme le Eſglíſe per la Ley, forſque per preſentment del Patron et admiſſion et inſtitution del Ordinarie. Et pur cel cauſe il conuient que le Succeſſor ſoy teigne content, et agree de ceo, que ſon Patron et Ordinarie loyalmẽt feſoyent adeuant, &c. Mes ceo neſt proofe que le Fee ſimple, &c. eſt en le Patron et Ordinarie, ou en aſcun ď eux, &c. Mez la cauſe que tiel grãt de Rent charge eſt bone, eſt pur ceo que ceux queux aueront intereſt, &c. en la dit Eſglíſe, ſ̃, le Patron ſolonque la Ley temporal, et Ordinarie ſolonque la Ley ſpirituall, fueront aſſentus, ou parties a tiel charge, &c. Et ceo ſeble eſtre la verie cauſe que tiel Glebe poit eſtre charge en perpetuitie, &c.

if the Parſon die, his ſucceſſor cãnot come to the ſaid Church to be Parſon of the ſame by the Law, but by the preſentment of the Patron, and admiſſion and inſtitutiõ of the Ordinarie. And for this cauſe the Succeſſour ought to hold himſelfe content, and agree to that wch his Patron and the Ordinarie haue lawfully done before, &c. But this is no proofe that the fee ſimple, &c. is in the Patron and the Ordinary, or in either of them, &c. but the cauſe that ſuch grant of rent charge is good is for that they who haue the intereſt, &c. in the ſaid Church, *viz.* the Patrõ according to the law Temporall, and the Ordinarie according to the law ſpiritual, were aſſẽting, or parties to ſuch charge, &c. And this ſeemeth to be the true cauſe why ſuch glebe may be charged in perpetuitie, &c.

¶ *Perle Fait le Parſon, & Patron, & Lordinarie, &c.* yet if the Parſon die, or in time of vacation, the Patron of the aſſent of the Ordinarie, or the Patron and Ordinary grant an annuitie or Rent charge out of the Glebe, this ſhall (as hath béene ſaid) binde the ſucceeding Parſons for euer.

16.E.3.Annuit.24. 40.E.30.3.E.3.17. Reg.38.

If there be Parſon, Patron, and Ordinary, and the Parſon by the ordinance and aſſent of

of the Ordinarie grant an Annuitie to another, hauing quid pro quo in consideration thereof, this shall binde the successor of the Parson, without the consent of the Patron.

6.E.3.4. 55. 7.E.3. 40, 41 F.N.B. 152. 7.E.3.32. 34.E.3.17.b.11.H. 4.68. 8.H 3.23.

A Church Parochiall may be donatiue and exempt from all ordinarie iurisdiction and the Incumbent may resigne to the Patron, and not to the Ordinarie, neither can the Ordinarie visit, but the Patron by Commissioners to be appointed by him: And by Litel. rule, the Patron and Incumbent may charge the Glebe, and albeit it be donatiue by a Lay man, yet mere laicus is not capable of it, but an able Clerke infra sacros Ordines is, for albeit hee come in by Lay donation, and not by admission or institution, yet his Function is spirituall, and if such a Clerke donatiue be disturbed, the Patrõ shall haue a Quare impedit of this Church donatiue and the Writ shall say, Quod permittat ipsum præsentare ad Ecclesiam, &c. and declare the speciall matter in his Declaration. And so it is of a Prebend, Chantery, Chappell donatiue, and the like, and no Laps shall incurre to the Ordinary, except it be so specially prouided in the Foundation. But if the Patron of such a Church, Chantery, Chappell, &c. donatiue, doth once present to the Ordinarie, and his Clerke is admitted and instituted, it is now become presentable, and neuer shall be donatiue after, and then Laps shall incurre to the Ordinary, as it shall of other Benefices presentable. But a presentation to such a Donatiue by a stranger, and admission and institution thereupon, is meerely void. And all this was resolued by the whole Court of Kings Bench, for the Rectorie Parochiall donatiue of Saint Burian in the Countie of Cornewall.

14.H.3.Quar.Imp.183. 1.E.3.12.64.14.li.4.31. F.N.B.3,c.16,c.3 bre. 660. 13.E 4.3 6.H.7.14.

It appeareth by our Bookes, and by diuers Actes of Parliament, That at the first all the Bishoprickes in England were of the Kings foundation, and donatiue per traditionem baculi, (id est) the Crosier, which was the Pastorall Staffe, & annuli, the Ring whereby hee was married to the Church. And King Henry the first being requested by the Bishop of Rome to make them electiue, refused it: but King Iohn by his Charter bearing date quinto Iunii, anno decimo septimo granted that the Bishoprickes should be eligible. If the King doth found a Church, Hospital, or free Chappell donatiue, he may exempt the same from ordinary Iurisdiction, and his Chancellor shall visit the same. May if the King doe found the same without any speciall exemption, the Ordinarie is not, but the Kings Chancellor, to visit the same. Now as the King may create Donatiues exempt from the visitation of the Ordinarie, so he may by his Charter licence any subiect to found such a Church or Chappell, and to ordaine that it shall be donatiue, and not presentable, & to be visited by the Founder, and not by the Ordinarie. And thus beganne Donatiues in England, whereof common Persons were Patrons.

Vid.Sect. 530. 22.H.6.26.F.N.B.37,4.

Hil 1 Iac.coram Reg. rot. 601 inter. Wil.Fairchild, Pl.& Wil.Gayer def.in Trespas.

17.E.3.40.6.E.3.10. 25.E.3. ca.vnico de Prouisor.Math. Par.pa.10. & 62.

¶ *Ordinarie.* Ordinarius is hee that hath ordinarie iurisdiction in causes Ecclesiasticall: immediate to the King and his Courts of Common Law, for the better execution of Iustice, as the Bishop or any other that hath exempt and immediate iurisdiction in Causes Ecclesiasticall.

F.N.B. 35. E.4.2. A.B. 27.E.3.8.& 85.8. Ass.29. 8.E.3.Ass.150. 18.E. Scire Fac.11,6.H.7,14.16.E.3. Briefe 660.21 E.3.60. Regist.40.Dyer.10.Eliz. f.273.14. El.ca.5.2.H.5. c.1.

¶ *Ley temporel.* which consisteth of three parts, viz. First, On the Common Law, expressed in our Bookes of Law, and iudiciall Records. Secondly, On Statutes contained in Acts and Records of Parliament. And thirdly, On Customes grounded vpon reason and vsed time out of minde, and the Construction and determination of these doe belonge to the Iudges of the Realme.

¶ *Ley spirituall, &c.* That is, the Ecclesiasticall Lawes allowed by the Lawes of this Realme, viz. which are not against the Common Law (whereof the Kings Prerogatiue is a principall part) nor against the Statutes and customes of the Realme, and regularly according to such Ecclesiastical Lawes, the Ordinarie and other Ecclesiasticall Iudges doe proceed in causes within their Conusance. And this iurisdiction was so bounded by the antient Common Lawes of the Realme, and so declared by act of Parliament.

The Statute of 25.H.8. c.19.33.H.6.34.32.H.6. 28.

¶ *Admission & Institution.* In propriete of speech, Admission is, when the Bishop vpon examination admitteth him to be able, and saith, Admitto te habilem. (d) Institution is, when the Bishop saith, Instituo te rectorem talis Ecclesiæ cum cura animarum, & accipe Curam tuam & meam. (e) But sometimes in a more large sense, admissus doth include Institutus also, Cuius præsentatus sit admissus, i. institutus. And it is to be obserued, That Institution is a good plenartie against a common person, (but not against the King, vnlesse he be inducted) and that is the cause that regularly plenarty shal be tried by the Bishop, because the Church is full by Institution, which is a spirituall Act, but void or not void shall be tried by the Common Law.

(d) Lib.4 f.75.& 79. Lib.6.f.49.Lib.7.fo.46.

(e) W.2.cap.5.13.E.1.

22.H.6.27,38.E.3.4.

If the common Law if an estranger had presented his Clerke, and he had beene admitted and instituted to a Church, whereof any Subiect had beene lawfull Patron, the Patron had no other remedy to recouer his Aduowson, but a Writ of Right of Aduowson, wherein the

Glanuill lib.13.c.18,19. 20.Mirror cap.5.§ 5. Bracton lib.4 fol.238,240 244,&c.291. Flet.lib.5. c.11.16,17. Brit.f.222, 223,224.

6.E 3.18 39.52.39.E.3. 24 43.E.3.25.45.E.3. Quar.imp.139. 10.E.2. Com.22 31.E.1.Quar. imp.186.

Nota by W.2. c.5 damages are given to the P. in Q. Impedit.

Incumbent was not to be remoued: and so it was at the Common Law, if an vsurpation had been had vpon an Infant or Feme Couert, hauing an Aduowson by discent, or vpon Tenant for life, &c. the Infant, Feme Couert, and he in the reuersion were driuen to their Writ of Right of Aduowson, for at the Common Law, if the Church were once full, the incumbent could not be remoued, and Plenartie generally was a good Plea in a Quare impedit, or Assise of Darreine presentment, and the reason of this was, to the intent that the Incumbent might quietly intend and applie himselfe to his spirituall Charge. And secondly, the Law intended, that the Bishop that had cure of soules within his Diocesse, would admit and institute an able man for the discharge of his dutie and his owne, and that the Bishop would doe right to euery Patron within his Diocesse. But at the Common Law, if any had vsurped vpon the King, and his Presentee had beene admitted, instituted, and inducted, (for without induction the Church had not beene full against the King) the King might haue remoued him by Quare impedit, and beene restored to his presentation, for therein he hath a Prerogatiue Quod nullum tempus occurrit Regi, but he could not present, for the plenartie barred him of that, neither could he remoue him any way but by Action, to the end the Church might be the more quiet in the meane time: * Neither did the King recouer dammages in his Quare impedit at the Common Law. But the said Statute (a) hath altered the Common law in the cases aforesaid as namely Quoad hoc, quod si pars rea accipiat de plenitudine Ecclesiæ per suam propriam præsentationem, non propter illam plenitudinem remaneat loquela, dummodo breue infra tempus semestre impetretur, &c. And also hath prouided remedy in the other cases as by the said Act appeareth.

F.N.B.36 k.143 a 35.E. 3.ca.3 13.R.2.ca.1 4.H. 4 ca.21.1.H. fol.19.

* Lib.fol.51. Li.7 fo.19. 3 H.6 Dam.17.34.H.6. 28.12.E.3. Champerty 9. 18.E.3. 2.Temps E.1. Quar.imp.181.

(a) W.2.ca.5.13.E.1.

(g) And if the King doe present to a Church, and his Clerke is admitted and instituted, yet before induction the King may repeale and reuoke his presentation. But regularly no man can be put out of possession of his Aduouson, but by admission and institution vpon an vsurpation by a presentation to the Church, Cum aliquis jus præsentandi non habens præsentauerit, &c. and not by collation of the Bishop: (h) And therefore if the Bishop collate without title, and his Clerke is inducted, this shall not put the rightfull Patron out of possession, for it shall be taken to be only prouisionally made for celebration of diuine Seruice vntill the Patron doe present, and therefore he is not driuen to his Quare impedit, or Assise of Darreine presentment in that case, but an Vsurpation by collation shall take away the right of Collation that is in another.

(g) 45.E.3.35.38.E.3.4. 25 E.3.47.13.El.Dy.292. Reg.302,&c.18.El.Dy. 348.14.E.4.2.7.H.4.32. 31.E.1.Quar.imp.185. W.2.vb.sup.

(h) 17.E.3.64.

It is to be obserued, That an vsurpation vpon a Presentation shall not only put out of possession him that hath right of presentation, but right of Collation also. Therefore at this day the Incumbent shall be remoued in a Quare impedit, or Assise of Darreine presentment, if there be not a Plenartie by six moneths before the Teste of the Writ, but then the Incumbent must be named in the Writ, or else he shall neuer be remoued: yet at the Common Law, if the Ordinary refused to admit and institute the Clerke of the Patron, or when any disturbed him to present, so as he could not preferre his Clerke, he might haue his Quare impedit, or Assise de Darreine presentment, and if the Church were not full, haue a Writ to the Bishop to admit his Clerke: but so odious was Symonie in the eye of the Common Law, that before the Statute of W.2. he recouered no dammages. At the Common Law, if hanging the Quare impedit against the Ordinary for refusing of his Clerke, and before the Church were full, the Patron brought a Quare impedit against the Bishop, and hanging the Suit, the Bishop admit and institute a Clerke at the presentation of another, in this case if Iudgement be giuen for the Patron against the Bishop, the Patron shall haue a Writ to the Bishop, and remoue the Incumbent that came in pendente lite by vsurpation, for pendente lite nihil innouetur, and therefore at the Common Law it was good policie to bring the Quare impedit against the Bishop as speedily as might be. And it is to be obserued, That albeit the Clerke that comes in pendente lite, by vsurpation, shall be remoued, yet if the rightfull Patron, being a stranger to the Writ, present pendente lite, and his Clerke is admitted and instituted, he shall not be remoued, for else by the bringing of such Quare impedit against the Ordinary, the rightfull Patrō might be defeated of his Presentation: & therfore euer after the Statute of Westm.2 amongst other things it was inquired ex Officio if the Church were full, and of whose presentation, &c. and if the Plaintife should haue a Writ to the Bishop, and his Clerke admitted, (as in most cases hee ought) yet may the rightfull Incumbent haue his remedie by Law.

9.H.6.32.& 56.19.H 6. 68.

18.E.2.Presentment 20. 50.E.3.Encumbent 10. 21.H.7.8.a.& b.9.Eliz. Dyer.260.F.N.B 32.14. H.8.31.19.E.2. Dar.Pres. 21.10.E 3.17.9 H.6.31.

30.E.3.tit. Quar-imp. Stath.46.E.3.15.9.H.6. 32.56.19.H.6.68.L.5. E.4.11.9.E.4.30.

And as it was good policie (as hath beene said) to bring a Quare impedit as speedily as might be against the Bishop, so it is good policie at this day to name the Bishop in the Quare impedit, for then hee shall not present by Laps. But seeing the Bishop shall not present by Laps because he is named in the Writ, what then, after that the time be deuolued to the Metropolitan, shall not he present by Laps because he is not named? To this it is answered, That he shal not in that case present by laps, for the Metropolitan shal neuer present or collate by laps after six moneths, but when the immediate Ordinary might haue collated by Laps within the six moneths, and had surceased his time. And so it is if the time be deuolued to the King

11.H.4.80.

for

for the first step or beginning faileth, and in humaine things Quod non habet principium, non habet finem And all these points were resolued (*) in a Writ of Error brought by Richard Bishop of London, & Ioan Lancaster against Anthony Lowe vpon a Iudgement giuen against them in a Quare impedit in the Common Place for the Church of Windishe. But now let vs heare what our Author will say vnto vs.

(*) Mich 3. Iacobi.

Sect. 649.

CItem, si ē taile ad issue et soit disseisie, et puis il releassa per son fait tout son droit a l' disseisor, en cest case nul droit de taile poit estre en le tenant en taile, pur ceo que il auoit releas tout son droit. Et nul droit poit estre en issue en le taile durant le vie son pere. Et tiel droit del enheritance en le taile nest pas tout ousterment expire per forze de tiel releas, &c. Ergo, il couient que tiel droit demurt en abeiance, vt supra, durant la vie le tenant en taile, que releassa, &c. & apres son decease donque est tiel droit maintenant en son issue en fait, &c.

ALso if Tenant in taile hath issue and is disseised, and after he releaseth by his Deed all his right to the Disseisor. In this case no right of taile can be in the tenant in taile, because he hath released all his right. And no right can bee in the issue in taile during the life of his father. And such right of the Inheritance in the taile is not altogether expired by force of such release, &c. *Ergo*, it must needs be that such right remaine in abeiance, *vt supra*, during the life of Tenant in taile that releaseth, &c. and after his decease such right presently is in his issue in deed, &c.

CLittleton having declared where a fee is in abeyance, & where a freehold and fee is in abeyance by Act in Law, & where a fee that is in abeyance may be charged; Here he putteth two cases where a right of an Estate Taile may be in abeyance by the act of the partie, which are so cleere and euident, as there needs no further proofe or argument, than Littleton hath iustly and artificially made, albeit some obiections of no weight haue beene made against it. If Tenant in taile of lands holden of the King bee attainted of felonie and the King after office setleth the same, the estate taile is in abeyance, there said to be in suspence.

PI Com. fol. 562. 563. in Walsinghams case. 14. E. 3. Discont. 5.

39. H 6. 60. 29. Ass. p. Walsinghams case vbi supra.

C *Grant son estate, concedit statum suum.* State or estate signifieth such Inheritance, Freehold, terme for yeares, Tenancie by Statute Merchant, Staple, Elegit or the like, as any man hath in Lands or tenements, &c. And by the grant of his estate, &c. as much as he can grant shall passe, as here by Littletons case appeareth. Tenant for life, the remainder in taile; the remainder to the right heires of Tenant for life, Tenant for life grant totum statum suum to a man & his heires, both estates doe passe.

Vide Sect. 65. 524. 525. 526. 44. E. 3. 10. 14. Ass. 28. 43. Ass. 8. 3. H. 7. 30.

44 Ass. 28 44. E. 3. 16.

Sect. 650.

CEo meisme le maner est, lou tenant en taile grant a tout son estate a vn auter, ē cest cas le grauntee nad estate forsque pur terme de

IN the same manner it is where tenant in taile grant al his estate to another; in this case the grantee hath no estate but for term of life of the Tenant

C *Right.* Ius, siue rectum (which Littleton often vseth) signifieth properly, and specially in Writs and Pleadings, whē an estate is turned to a right, as by Discontinuance, Disseisin, &c. where it shall bee said, Quod ius descendit & non terra. But (right) doth also include the

20. H. 6. 9.

Vide Sect.465.Pl.Com. 484 Lib.8 fo.153.Althams caſe. 39 H.6.38.

eſtate in eſſe in conueyances, and therefore if Tenant in fee ſimple make a Leaſe for yeares, & releaſe all his right in the land to the Leſſee and his heires the whole eſtate in fee ſimple paſſeth.

And ſo commonly in fines, the right of the land includeth & paſſeth the ſtate of the Land, as A. cognouit tenementa prædicta eſſe ius ipſius B. &c. And the Statute (a) ſaith, Ius ſuum defendere, (which is) ſtatum ſuum. And note that there is Ius recuperandi, ius intrandi, ius habendi, ius retinendi, ius percipiendi, ius poſſidendi.

(a)W.2 Cap.3. Pl.Com.484.& 487.b.

+ i. ſ. poſſeſſionem

Title properly (as ſome ſay) is when a man hath a lawfull cauſe of entry into Lands whereof another is ſeiſed, for the which hee can haue no Action, as title of condition, title of Mortmaine &c. But legally this word (Title) includeth a right alſo, as you ſhall perceiue in many places in Littleton: and title is the more generall word, for euery right is a title, but euery title is not ſuch a right for which an Action lieth, and therefore Titulus eſt iuſta cauſa poſſidendi quod noſtrum eſt, and ſignifieth the meanes whereby a man commeth to land, as his title is by fine or by feoffment, &c. And when the Plaintife in Aſſiſe maketh himſelfe a title, the Tenant may ſay, Veniat Aſſiſa ſuper titulum, which is as much to ſay, as vpon the title which the Plaintife hath made by that particular Conueyance, Et dicitur titulus á tuendo, becauſe by it he holdeth and defendeth his Land, and as by a releaſe of a right a title is releaſed, ſo by releaſe of a title a right is releaſed alſo. See more hereof in Fitzherbert and Brookes Abridgements in the title of Title.

Vide Sect.429.639,&c.

6.H.7.8.a. Althams caſe vbi ſupra.

¶ *Intereſt.* Intereſſe is vulgarly taken for a terme or chattle reall, and more particularly for a future tearme, in which caſe it is ſaid in pleading, that he is poſſeſſed De intereſſe termini. But Ex vi termini in legall vnderſtanding it extendeth to eſtates, Rights and Titles, that a man hath of, in, to, or out of Lands, for he is truly ſaid to haue an intereſt in them: and by the grant of totum intereſſe ſuum in ſuch Lands, as well reuerſions as poſſeſſions in fee ſimple ſhall paſſe. And all theſe words ſingularly ſpoken are nomina collectiua, for by the grant of totum ſtatum ſuum in Lands all his Eſtates therein paſſe, Et ſic de cæteris.

Pl.Com.fol.374.in Seignior Zouches caſe, & fol. 487.& 448.in Nichols caſe.

23.H.8.Taile Br.32. 35.H.8.Grant.Br.150. Vide 16.Eliz.Dier 325.b. Titulum.

¶ *Ne vnques auera briefe de waſte, &c.* So it is if Tenant for life be, the remainder in taile, and he in the remainder releaſe to the Tenant for life, all his right and ſtate in the Land. Hereby it is ſaid in our Bookes, that the eſtate of the Leſſee is not inlarged, but the releaſe ſerueth to this purpoſe, to put the eſtate taile into abeiance, ſo as after that he in the remainder cannot haue an Action of waſte, yet in that caſe (ſauing reformation) the Leſſee for life hath an eſtate for the life of Tenant in taile expectant vpon his owne life. But if Tenant in fee releaſe to his Tenant for life all his right, yet he ſhall haue an Action of Waſte. And if Tenant in taile make a Leaſe for his owne life, he ſhall haue an Action of Waſte.

43.Aſſ.p.13.41.E.3.tit. Waſte 81. 11.H.4.67. 13.H.7.10.Pl.Com.482. Per Dier 27.H.8.20.

42.E.3.23.

F.N.B.60.H.41.E.3. Waſte 83.42.E.3.18.

vie del tenant en le taile et le reuerſion ô le taile neſt pas en le tenant en taile, pur ceo q̃ il auoit graunt tout ſon eſtate et ſon droit, &c. Et ſi le tenant a que le graunt fuit fait fiſt Waſt, le tenant en le taile ne vnq̃ auera briefe de waſt, pur ceo que nul reuerſion eſt en luy. Mes le reuerſion et le enheritance de le taile, durant le vie le tenant en le taile, eſt en abeiance, ceſtaſcauoir, tantſolement en le remembrance, conſideration, et intelligence de la ley.

in taile, and the reverſion of the taile is not in the Tenant in taile, becauſe he hath granted all his eſtate and his right, &c. And if the Tenant to whom the grant was made make waſt, the Tenant in taile ſhall not have a Writ of waſte, for that no reverſiõ is in him: but the reverſion & inheritance of the taile during the life of the Tenant in taile is in abeiance, that is to ſay, onely in the remembrance, cõſideration, and intelligence of the Law.

Sect. 651.

ITem, si vn Eueſque alien terres que ſont parcel de ſon Eueſquery & deuie, ceo eſt vn diſcontinuance a ſon ſucceſſor, pur ceo que il ne poit enter, mes eſt mis a ſon briefe De Ingreſſu ſine aſſenſu capituli.

ALſo if a Biſhop alien lands which are parcell of his Biſhopricke and die, this is a diſcontinuance to his ſucceſſor, becauſe he cannot enter, but is put to his Writ of *De Ingreſſu ſine aſſenſu capituli.*

Of this ſufficient hath beene ſaid (how the Law ſtandeth at this day) before in this Chapter.

Sect. 652.

ITem, ſi vn Dean alien terres queux il ad en droit de luy et ſon chapiter, & morust, ſon ſucceſſor poit enter. Mes ſi le Deane eſt ſole ſeiſie come ẽ droit ſon Deanry, donque ſon alienation eſt diſcontinuance a ſon ſucceſſor come eſt dit adeuant.

ALſo if a Deane alien lands which he hath in right of him and his Chapter and dieth, his ſucceſſor may enter. But if the Deane be ſole ſeiſed as in right of his Deanary, then his alienation is a diſcontinuance to his ſucceſſor as is ſaid before.

THereof alſo that which was neceſſary is before ſaid in this Chapter, and Littletons owne words are plaine and euident.

21. E. 4. tit. Feoffments, & faits 29.
21. E. 4. 85. 86.

Sect. 653, 654, 655, & 656.

ITem, peraduenture aſcuns voilont arguer et dire, que ſi vn Abbe et ſon couent ſont ſeiſies en lour demeſne come de fee de certaine terres a eux et a lour ſucceſſors, &c. et l'Abbe ſans aſſent de ſon Couent alien meſmes les terres a vn auter et deuie, ceo eſt vn diſcontinuance a ſon ſucceſſor, &c.

ALſo peradventure ſome will argue and ſay, that if an Abbot and his Covent bee ſeiſed in their demeſne as of fee of certaine lands to them & to their ſucceſſors, &c. and the Abbot without the aſſent of his Covent alien the ſame lands to another and die, this is a diſcontinuance to his ſucceſſor, &c.

Sect. 654.

IPer meſm̃ le reaſon ils voilent dire, que lou vn Dean et Chapter ſont ſeiſies de certain terre a eux et a lour ſucceſſors, ſi le Deane alien meſm̃ la terre, &c. ceo

BY the ſame reaſon they will ſay, that where a Deane and Chapter are ſeiſed of certaine lands to them and their ſucceſſors, if the Deane alien the ſame lands,

ceo ſerroit vn diſcontinuance a ſon ſucceſſor iſſint que ſon ſucceſſor ne poit enter, &c. A ceo poit eſtre reſpondue que il y ad grand diuerſitie penter les deux caſes.

&c. this ſhall bee a diſcontinuance to his ſucceſſor, ſo as his ſucceſſor cannot enter, &c. To this it may be anſwered, that there is a great diverſitie betweene theſe two caſes.

Sect. 655.

CAr quant vn Abbe & l' Couent ſont ſeiſies, vncore ſils ſont diſſeiſie, Labbe auera aſſiſe en ſon noſm demeſne, ſans noſmer le Couent, &c. Et ſi aſcun voile ſuer Præcipe quod reddat, &c. de meſmes les terres quant ils fueront en le maine Labbe et Couent, il couient que tiel action real ſoit ſue enuers Labbe ſolement ſans noſme la Couent, pur ceo q̄ touts ſont moꝛts perſons en la ley foꝛſque Labbe que eſt le ſouueraigne, &c. Et ceo eſt per cauſe del ſouueraigntie; Car autrement il ſerroit foꝛſque come vn de les auters Moignes de le Couent, &c.

FOr whē an Abbot, and the Covent are ſeiſed, yet if they bee diſſeiſed, the Abbot ſhall have an aſſiſe in his owne name without naming the Covent, &c. And if any will ſue a *Præcipe quod reddat. &c.* of the ſame lands when they were in the hands of the Abbot and Covent, it behoveth that ſuch action reall bee ſued againſt the Abbot onely without naming the Covent, becauſe they are all dead perſons in Law, but the Abbot who is the ſoveraigne, &c. and this is by reaſon of the ſoveraignty: For otherwiſe he ſhould be but as one of the other Monkes of the Covent, &c.

Sect. 656.

CMEs vn Dean et le Chapter ne ſont moꝛts pſons en la ley, &c. car cheſcun de eux poit auer action per ſoy ē diuers caſes. Et de tiels terres ou tenements q̄ le Deane et Chapter ont en common, &c. ſils ſoient diſſeiſies, le Deane et Chapter aueront vn aſſiſe, et nemy le Deane ſole, &c. Et ſi auter voile auer action real de tiels terres ou tenements enuers le Deane, &c. il couient de ſuer enuers le Deane et Chapter, et nemy enuers le Deane ſole, &c. et iſſint il appiert

BVt Deane and Chapter are not dead perſons in Law, &c. for every of them may have an action by himſelfe in divers caſes. And of ſuch lands or tenements as the Deane and Chapter have in common, &c. if they bee diſſeiſed, the Deane and Chapter ſhall have an aſſiſe, and not the Dean alone, &c. And if another will have an action reall for ſuch lands or tenements againſt the Deane, &c. he muſt ſue againſt the Deane and Chapter, and not againſt the Deane alone, &c. and ſo there appeareth a

appiert grand diuerſitie perenter les deux caſes, &c.

great diverſitie betweene the two caſes, &c.

THeſe are apparant and need no explanation. Hauing in the 655. Section mention is made of the Præcipe quod reddat, which in this place is intended of a reall action whereby land is demanded, and is ſo called of the words in euery ſuch Writ.

And the reaſon of this diuerſitie betweene the caſe of the Abbot and Couent, and Deane and Chapter is, for that (as hath beene ſaid) the Monkes are regular, and ciuilly dead, and the Chapter are ſecular, and perſons able and capable in Law. But by the policie of Law the Abbot himſelfe (here termed the ſouereigne) albeit he be a Monke and regular, yet hath he capacitie and abilitie to ſue and be ſued, to enfeoffe, giue, demiſe and leaſe to others, and to purchaſe and take from others, for otherwiſe they which right haue ſhould not haue their lawfull remedie, nor the houſe remedie againſt any other that did them wrong, neither could the houſe without ſuch capacitie and abilitie ſtand. And the Couent haue no other abilitie or capacitie, but only to aſſent to eſtates made to the Abbot, and to eſtates made by him, which for neceſſities ſake, though they be ciuilly dead, they may doe

Vid. Sect. 200. 8. E. 3. 27. 11. H. 4. 84. 21. E. 4. 86. 11. H. 7. 12.

Sect. 657.

ITem, ſi le Maſter dun Hoſpitall diſcontinue certaine terre de ſon Hoſpitall, ſon ſucceſſor ne poit enter, mes eſt mis ſon briefe de ingreſſu ſine aſſenſu confratrum & conſororum &c. Et touts tiels brieues pleinment appearõt en le Regiſter, &c.

ALſo if the Maſter of an Hoſpitall diſcontinue certaine land of his Hoſpitall, his ſucceſſor cannot enter, but is put to his writ of *De ingreſſu ſine aſſenſu confratrum & conſororum, &c.* And all ſuch writs fully appeare in the Regiſter, &c.

THis muſt alſo be vnderſtood where the Maſter of the Hoſpitall hath ſole and diſtinct poſſeſſions, and not where he and his brethren are ſeiſed as a body politike aggregate of many. And here Littleton (as diuers times before) doth cite the Regiſter.

Sect. 658.

ITem, ſi terre ſoit leſſe a vn home pur terme de ſa vie, le remainder a vn auter en le taile, ſauant le reuerſion al leſſor, et puis celuy en le remainder diſſeiſiſt le tenant a terme de vie, et fait vn feoffment a vn auter en fee, et puis mourſt ſans iſſue, et le tenant a terme de vie mourſt, il ſemble en ceſt cas, q̃ celuy en la reuerſion bien puit enter ſur le feoffee, pur ceo que celuy en le remainder que fiſt le feoffment, ne fuit vnque ſeiſie en le taile per force de meſme le remainder, &c.

ALſo if land be let to a man for terme of his life, the remainder to another in taile ſaving the reverſion to the Leſſor, and after he in the remainder diſſeiſeth the Tenant for terme of life, and maketh a feoffment to another in fee and after dieth without iſſue, and the Tenant for life dyeth. It ſeemeth in this caſe that hee in the reverſion may well enter upon the feoffee, becauſe hee in the remainder which made the feoffment was never ſeiſed in taile by force of the ſame remainder, &c.

1 R.A. 634 D. 5.

Here

Vid.Sect.633.592.596. 597.601.640.641. Vide Sect.637.

THere it appeareth, That albeit the Feoffor hath an Estate Taile in him expectant vpon an estate for life, yet his Feoffment worketh no Discontinuance. Wherein Littleton doth adde a limitation to that which in this Chapter he had generally said, viz. That an Estate Taile cannot be discontinued, but where he that maketh the Discontinuance was once seised by force of the Taile, which is to be vnderstood when he is seised of the Frehold and Inheritance of the Estate in Taile, and not where he is seised of a Remainder or Reuersion expectant vpon a Frehold: which Frehold (as often hath beene said) is euer much respected in Law.

CHAP. 12. Of Remitter. Sect. 659.

THere our Author hauing next before treated of a Discontinuance, very aptly beginneth this chapter with a description of a Remitter.

¶ *Remitter est vn antient terme en la Ley* and is deriued of the Latine Verbe Remittere, which hath two significations, either, To restore and set vp againe, or to cease. Therefore a Remitter is an operation in Law vpon the meeting of an ancient right remediable, and a latter estate in one person where there is no follie in him, whereby the ancient right is restored and set vp againe, & the new defeasible estate ceased & vanished away. And the reason hereof is, for that the law preferreth a sure & constant right, though it be little, before a great estate by wrong and defeasible, and therefore the first and more ancient is the most sure and more worthy title, Quod prius est, verius est, & quod prius est tempore, potius est iure: (a) Therefore many Bookes in stead of Remitter, say, That he is en son primer estate, or en son melior droit, or En son melior Estate, or the like.

(a) 25. Ass.pl.4.35.Ass.pl. 11.26.E.3.69.11.H.4. 50.a.41.E.3.17.b. & tit. Remitter 11 6.E.3,17.

¶ *Lou home ad deux Titles.* Here this word (Titles) is taken in the largest sense, including rights for being properly taken, (b) as in case of a condition, mortmaine,

(b) V.Sect.429.& 659. &c.34.H.8.tit. Remitter. Br.50.44.E.3.Attaint.22. 38.Ass.pl.7.

¶ Remitter ē vn antient terme en la Ley, et est lou home ad deux titles a terres ou teñts, s. vn pluis antient title, et vn auter title pluis darrein, et sil vient a la terre per le pluis darreine title, vncore la Ley luy adiudgera eins per force ōl pluis eigne title, pur ceo que le pluis eigne title est le pluis sure title et pluis deigne title. Et donque quant home est adiudge eins per force ō son eigne title, ceo est a luy dit vn remitter, pur ceo que la ley luy mitter destre eins en la terre per le pluis eigne et sure title. Si come tenant en le taile discontinua la taile, et puis il disseisist s discontinuee, et illint morust seisie, per que les tenemēts discendont a son issue ou cosine, inheritable per

REmitter is an antient terme in the Law, and is where a mā hath two titles to Lands or Tenements, *viz.* one a more antiēt title, and another a more latter title, and if he come to the land by a latter Title, yet the Law will adiudge him in by force of the elder title, because the elder title is the more sure and more worthy Title. And then when a man is adiudged in by force of his elder title, this is said a Remitter in him, for that the Law doth admit him to be in the Land by the elder and surer Title. As if Tenant in Taile discontinue the Taile, and after hee disseiseth his Discontinuee and so dieth seised, whereby the Tenements discēd to his Issue or cosine inheritable by

per force de le Taile: en ceſt caſe, ceo eſt a luy a que les Tenements diſcendont q̃ ad droit per force de le Taile vn remitter a le Taile, pur ceo q̃ le Ley luy mitte et adiudge deſtr̃ eins p force de l' taile que eſt ſon eigne title, car ſil ſerroit eins per force de le diſcent, donques le Diſcontinuee puiſſoit auer Briefe de Entre ſur diſſeiſin en l' Per enuers luy, et recoueroit les tenemẽts et ſes dammages, &c. Mes entant que il eſt eins en ſon remitter per force de le Taile, le title et le intereſt le diſcontinuee, eſt tout ouſterment anient et defeat, &c.

force of the Tayle: In this caſe this is to him to whom the Tenements deſcend, who hath right by force of the Tayle, a Remitter to the taile, becauſe the Law ſhall put and adiudge him to bee in by force of the Taile, which is his elder Title; for if hee ſhould bee in by force of the diſcent, then the Diſcontinuee might have a Writ of Entrie *Sur Diſſeiſin* in the *Per* againſt him, and ſhould recover the Tenemẽts & his dammages, &c. but inaſmuch as he is in his remitt̃ by force of the taile, the title & intereſt of the diſcontinuee is quite taken away & defeated, &c.

aſſent to a Vauſſher, and the like, there is no Remitter wrought vnto them, becauſe theſe are but bare titles of entrie, for the which no Action is giuen, but a Remitter muſt be to a precedent right: And Lit. in this Chapter putteth al his caſes onely of Remitters, to Rights remediable.

¶ *Et vn auter Title pluis darreine, &c.* Here is to be obſerued, That an Eſtate muſt worke a Remitter to an ancient right, for albeit two rights doe deſcend, there can be no Remitter, becauſe one right cannot worke a Remitter to another: for regularly to euery remitter there be two incidents, viz. an ancient right and a defeaſible eſtate of Freehold comming together. 19.H.6.39.78.45.tit. Entre Cong. 3.Pl.Com. 216.a.

¶ *Le pluis eigne Title eſt le pluis ſure Title, & pluis digne Title.* So as the eldeſt title is worthily (as hath beene ſaid) preferred, becauſe it is the more ſure and more worthy.

¶ *Sicome Tenant en Taile diſcontinue le taile, &c.* Here our Author according to his accuſtomed manner, to illuſtrate his deſcription putteth an example of a Remitter, where the Law preferreth the ancient eſtate by right, before a new Eſtate defeaſible. And this Remitter is wrought by an Eſtate caſt vpon the Iſſue in Taile by diſcent, which is an Act in Law, and the diſcent of the land in poſſeſſion, and the right of Eſtate Taile deſcend together. 19.H.6.61.62.

¶ *Eſt tout ouſterment anient & defeat, &c.* Here be two things implied and to be vnderſtood: Firſt, That this Remitter is wrought in this caſe by operation of Law vpon the Freehold in Law deſcended without any entrie. Secondly, That the Law ſo fauoureth a Remitter, (being a reſtoring to right) that if the Diſcontinuee be an Infant or a Feme Couert, and Tenant in Taile after a Diſcontinuance diſſeiſe them & die ſeiſed, the Iſſue ſhall be remitted without any reſpect of the priuiledge of Infancie or Couerture, & therefore our Author ſaid, Le title & intereſt le Diſcontinuee eſt tout ouſterment anient & defeat. 11.E.4 1.

¶ *Donques le Diſcontinuee, &c.* Here is a reaſon added in this particular Caſe, that ſitteth not other caſes of Remitter; for in this caſe and many other, the Law that abhorreth Suits of vexation, doth auoid circuitie of Action, for the Rule is, Circuitus eſt euitandus. 11.E.3.3.cit.Aſſ.35.4.E. 4.35.11.R.2.Bar.242.30. E.3.8.6.E.3.7.19.H.6.63. 24.E.3.70.14.H.4.27.10 H.7.11.F.N.B. Meſne & Waſt.

Sect. 660.

¶ Item, ſi l' tenãt en Tayle enfeoffa ſon fits

Alſo if Tenant in Tayle Infeoffe his Sonne in Fee,

¶ Our Author hauing put one example where both the Rights deſcend together, now Temps E.1.Remit.13.11. E.3.Age 5,38.E.3.24. 40.E.3.43.21.E.4.19.

now puts another example where the Issue in taile claimeth by purchase in the life of Tenant in taile, & the ancient right descendeth after to the same Issue.

¶ *Car coment que tiel Heire fuit de pleine age al tẽps del mort, &c.* The reason is, Because no follie can be adiudged in the Infant at the time of the acceptance of the Feoffement. Therfore the Law respecteth the time of the Feoffement, & not the time of the death: and albeit he might have waived the estate which he had by the Feoffemẽt at his full age, yet here it appeareth, that the right of the Estate Taile descending to him either within age, or of full age, shall work a Remitter in him, for that the waiver of the state should have bene to his losse and prejudice.

Since Littleton wrote, and after the Statute of 27. H. 8. cap. 10. if Tenant in Taile make a Feoffement in Fee to the vse of his Issue being within age, and dieth, & the right of the Estate Taile descend to the Issue being within age, yet he is not remitted, because the statute executeth the possession in such plite manner & forme as the vse was limited: Et sic de similibus, so as there is a great change of Remitters since Littleton wrote.

27.H.8.c.10. of Vses. 35.H.8. Dy.54.b.6.E.6. ib.77.1.& 2.P.& M. 116. 2.& 2.P.& M.129. 191. 28.H.8.23. b. Pl. Com. Anw Townshends case fol. 34. H. 8. tit. Remit. Br. 49. Pl. 112, 114 207.

But if the Issue in Taile in that case waive the Possession, and bring a Formedon in the Discender, and recouer against the Feoffees, he shall thereby bee remitted to the Estate Taile, otherwise the Lands may be so incumbred, as the Issue in Taile should be at a great inconvenience: but if no formdon be brought if that Issue dieth, his Issue shall bee remitted, because a state in fee simple at the cõmõ Law descendeth vnto him.

Pl. Com. vbi sup.

¶ *Esteant de pleine age il charge per son fait*

en fee, ou son Cosine inheritable per force de le taile, lequel fits ou cosin al temps de feoffement est deins age, & puis le tenant en le taile deuia, & celuy a que le feoffemẽt fuit fait est son heyre per force de le Taile, ceo est vn remitter al heire en le taile a que le feoffment fuit fait. Car coment que durant la vie le Tenant en le taile que fist le Feoffement. tiel heire serra adiudge eins p force de le feoffment, uncore apres la mort le tenant en le tayle, heire serra adiudge eins per force de le taile, & nemy p force de le Feoffment. Car coment que tiel heire fuit de pleine age al temps de le mort de le Tenaunt en le Taile que fist le Feoffment, ceo ne fait ascun matter, si ilz fuit deins age al tẽps del feoffmẽt fait a luy. Et si tiel heire esteant deins age al temps de tiel Feoffement, vient al pleine age vivant le Tenãt en le taile, que fist le Feoffment, & illint esteant de pleine age, il charge per son fait mesme la Terre ove vn

or his Cosine inheritable by force of the Taile, which Sonne or Cosine at the time of the Feoffemẽt is within age, and after the Tenant in Taile dieth, and hee to whom the Feoffement was made is his heire by force of the Taile, this is a remitter to the heire in taile to whom the Feoffement was made: for albeit that during the life of the Tenant in Tayle who made the Feoffment, such heire shall be adiudged in by force of the Feoffment, yet after the death of Tenãt in taile, the heire shall be adiuged in by force of the Taile, & not by force of the feoffmẽt. For although such heire were of full age at the time of the death of the Tenãt in Taile who made the Feoffment, this makes no matter, if the heire were within age at the time of the Feoffment made unto him. And if such heire beeing within age at the time of such feoffmẽt commeth to ful age, living the tenãt in tayle that made the feoffement, & so being of full age he charges by his deed

vn common de paſture, ou oue vn rent charge, & puis le tenant en le taile moruſt, ore il ſemble q̃ le terre eſt diſcharge del common, et de le rent, pur ceo que le heire eſt eins de auter eſtate en la terre, que il fuit al temps de le charge fait, entant que il eſt en ſon remitter per force de le tayle, & iſſint leſtate, que il auoit al temps de le charge, eſt ouſtermẽt defeat, &c.

the ſame Land with a common of paſture or with a rent charge, & after the Tenant in taile dieth, now it ſeemeth that the Land is diſcharged of the Cõmon, and of the rent, for that the heire is in of another Eſtate in the Land then he was at the time of the charge made, in as much as hee is in his Remitter by force of the tayle, and ſo the eſtate which hee had at the time of the charge is utterly defeated, &c.

&c. The reaſon is becauſe the Grantor had not any right of the eſtate in taile in him at the time of the grant, but only the eſtate in fee ſimple gained by the feoffment, which (as Littleton here ſaith) is wholly defeated. And the ſtate of the land out of which the rent iſſued, being defeated, the rent is defeated alſo.

But if Tenant in taile make a Leaſe for life whereby he gaineth a new reuerſion in fee, ſo long as Tenant for life liueth, and he granteth a rent charge out of the Reuerſion, and after Tenant for life dieth, whereby the Grantor becommeth Tenant in taile againe, and the Reuerſion in fee defeated, yet becauſe the Grantor had a right of the entaile in him, cloathed with a defeaſible fee ſimple, the rentcharge remaineth good againſt him, but not againſt his iſſue, which diuerſities is 11.H.7.21. Edriches caſe

worthy of obſeruation, for it openeth the reaſon of many Caſes.

If the heire apparant of the Diſſeiſee diſſeiſe the Diſſeiſor, and grant a rent charge, & then the Diſſeiſee dieth, the Grantor ſhall hold it diſcharged, for there a new right of entrie doth deſcend vnto him, and therefore he is remitted.

So if the Father diſſeiſe the Grandfather, and granteth a Rent charge, and dieth, now is the entry of the Grandfather taken away, if after the Grandfather dieth, the Sonne is remitted, and he ſhall auoid the charge. So as where our Author putteth his example of a fee taile, it holdeth alſo in caſe of a fee ſimple.

¶ *Vn common de paſture, ou vn rent charge, &c.* Here Littleton putteth his caſe of things granted out of the Land. But what if the iſſue at full age by Deed indented, or Deed poll make a Leaſe for yeares of the Land, and after by the death of Tenant in taile he is remitted, whether ſhall he auoid the Leaſe or no. And it is holden he ſhall not, becauſe it is made of the Land it ſelfe, and the Land is become by the Leaſe in another plight, then it is in the caſe of a grant of a Rent charge, which I gather out of our Authors owne words in another place. 33.H.8 Dier. 51.b. Vide Sect. 289.

¶ *La terre eſt diſcharge del rent, &c.* Littleton doth adde theſe words materially, becauſe the whole grant is not thereby auoided, but the Land diſcharged of the Rent charge, for the Grantee ſhall haue notwithſtanding a Writ of Annuitie, and charge the perſon of the Grantor. Li.2.f.3.6.b. Wards caſe.

Sect. 661.

¶ Item, vn prin-cipall cauſe pur que tiel heire en les caſes auãtdits, et auters caſes ſemblables ſerra dit en ſon remitter, eſt pur ceo que il ny ad aſcun perſon enuers que il poit ſuer ſon briefe de

ALſo a principall cauſe why ſuch heire in the Caſes aforeſaid, & other like caſes ſhall bee ſaid in his Remitter; is for that there is not any perſon againſt whom he may ſue his writ of *Formedon*. For againſt

¶ *VN principall cauſe pur que, &c.* And of this opinion is (d) Littleton in our Bookes.

¶ *Il nad aſcun perſon enuers que, &c. ſicome il auoit loialment recouer meſme la terre vers vn anter, &c.* Here it is to be vnderſtood, that regularly a man ſhall not be remitted to a right (d) 12.E.4.20. 41.E.3.18. 11.H.4.50.

right remedilesse, for the which he can haue no Action, for Littleton here saith, that there is no person against whom the issue when he commeth to the land without folly may bring his Action, and saith also, that this is the principall cause of the Remitter, for neither an Action without a right, nor a right without an Action can make a Remitter. As if Tenant in taile suffer a common recouery in which there is error, and after Tenant in taile disseiseth the recoueror and dieth, here the issue in taile hath an Action, viz. a Writ of Error, but as long as the recouerie remaineth in force, he hath no right, and therefore in that case there is no Remitter.

Lib.3.fol.3. the Marquesse of Winchesters case.

Formedon. Car enuers luy mesme, il ne poit suer, & il ne poit suer enuers nul auter, car nul auter est tenant del franktenement, et pur cel cause la ley luy adiudge eins en son remitter, s. ẽ tiel plite, sicome il auoit loialment recouer mesme la terre enuers vn auter, &c.

himselfe he cānot sue, and he cannot sue against any other, for none other is Tenant of the freehold, and for this cause the Law doth adiudge him in his Remitter, s. in such plite, as if hee had lawfully recovered the same Land against another, &c.

If B. purchase an Aduowson, and suffereth an vsurpation and six moneths to passe, and after the vsurper granteth the Aduowson to B. and his heires, B. dieth, his heire is not remitted because his right to the Aduowson was remedilesse, viz. a right without an Action.

5.H.7.35. Tenant in taile of a Mannor whereunto an Aduowson is appendant maketh a Discontinuance, the Discontinuee granteth the Advowson to Tenant in taile and his heires, Tenant in taile dieth, the Issue is not remitted to the Aduowson, because the Issue had no Action to recouer the Aduouson before he recouered the Mannor whereunto the Aduowson was appendant. And so it is of all other Inheritances, regardant, appendant, or appurtenant, a man shall neuer be remitted to any of them before he recontinueth the Mannor, &c. whereunto they are regardant, appendant, or belonging.

Britton fol.126. Car nul ne poet claimer droit en les appurtenances ne en les accessories que nul droit ad en le principall.

(c) Bract.li.4.fol.243.b. (c) Item, excipi potest, &c. quamuis ius habeat in tenemento & pertinentiis, primo recuperare debet tenementum ad quod pertinet aduocatio, & tunc postea præsentet & non ante, & de hac materia in Rotulo de Termino Sancti Michaelis, anno Regis Henrici tertio in comitatu Norff. de Thoma Bardolfe.

8.R.2.Quare Imp.199. 2.H.4.18.14.H.6.15, 16. 8.H.6.17.33.H.6.15. F.N.B.25.B. & 36.F. 24.E.3.Discont.16. 33.H.8.Dier.48.b. But on the other side, if a man be remitted to the principall, he shall also be remitted to the appendant or accessory, albeit it were seuered by the Discontinuee, or other wrong doer. And therefore if Tenant in taile be of a Mannor, whereunto an Aduowson is appendant, and infeoffeth A. of the Mannor with the appurtenances, A. re-infeoffeth the Tenant in taile sauing to himselfe the Aduowson, Tenant in taile dieth, his issue being remitted to the Mannor, is consequently remitted to the Aduowson, although at that time it was seuered from the Mannor. So it is in the same case if Tenant in taile had beene disseised, and the Disseisor suffer an vsurpation, if the Disseisee enter into the Mannor, he is also remitted to the Aduowson.

Sect. 662.

ITem, si terre soit taile a vn home & a sa feme, et a les heires ô lour deux corps engendres, les queux ont issue file, et le feme deuy, et le baron prent auter feme, et ad issue vn auter file, & discontinua le taile, & puis disseisie ie discontinuee et iffint morust seisie, ore le terre discendera

ALso if Land be entailed to a man & to his wife, and to the heires of their two bodies begotten, who haue issue a daughter, and the wife dieth, and the husband taketh another wife, and hath issue another daughter, and discontinue the taile, and after he disseiseth the Discontinuee and

dera a les deux files. Et en ceſt caſe quant al eigne file, que eſt inheritable per force de le tayle, ceo neſt vn remitter forſque de le moity. Et quant al auter moity el eſt mis a ſuer ſon action de Formedon enuers ſa ſoer. Car en ceſt cas les deux ſoers ne ſont pas tenants en parcenary, mes ſont tenants en common, pur ceo que ils ſont eins per diuers titles. Car lun ſoer eſt eins en ſon remitter per force de le taile quãt a ceo que a luy affiert, et lauter ſoer eſt eins quant a ceo que a luy affiert en fee ſimple per l'diſcent ſon pier, &c.

ſo die ſeiſed, now the Land ſhal deſcend to the two Daughters. And in this caſe as to the eldeſt daughter, who is inheritable by force of the tayle, this is no remitter, but of the moitie. And as to the other moitie ſhe is put to ſue her action of *Formedon* againſt her ſiſter. For in this caſe the two ſiſters are not tenants in parcenarie, but they are Tenants in common, for that they are in by diuers titles. For the one ſiſter is in her remitter by force of the entaile, as to that which to her belongeth, and the other ſiſter is in as to that to her belongeth in fee ſimple by the diſcent of her father, &c.

¶ *Ceo neſt remitter forſque pur le moitie, &c.* Here Littleton putteth a caſe where the iſſue in taile ſhall be remitted to a moitie, becauſe but a moity of the Land deſcended vnto her, and there cannot be any remitter, but for ſo much as commeth to the iſſue by diſcent, or by any other meanes without his folly, and in this caſe by act in Law the Coparcenary is defeated, for the daughters are in by ſeuerall Titles, viz. the eldeſt daughter is Tenant in taile per formam doni, by the remitter of the one moitie, and the youngeſt ſeiſed in fee ſimple by diſcent of the other moitie, againſt whom the other ſiſter in taile may haue her Formedon. 44. E.3.28.19. H.6.59.

Sect. 663.

¶ En meſme le manner eſt, ſi tenant en tayle enfeoffa ſon heire apparant en le tayle eſteant lheire deins age, et vn auter ioint tenant en fee, et le tenant en tayle mozuſt, ozel heire en tayle eſt en ſon remitter quant a lun moity, et quant a lauter moitie il eſt mis a ſon briefe de Formedon, &c.

IN the ſame manner it is if Tenant in taile enfeoffe his heire apparant in tayle, (the Heire being within age) and another ioint-tenant in fee, and the Tenant in tayle dieth, now the heire in tayle is in his Remitter as to the one moitie, and as to the other moitie, hee is put to his Writ of *Formedon*, &c.

¶ *Le heire, &c. eſt en ſon remitter quant a lun moitie, &c.* Hereby it appeareth, that albeit ioynt tenants be ſeiſed pro indiuiſo per my & per tout; yet each of them hath in iudgement of Law but a right to a moitie, and therefore the iſſue in taile in this caſe is remitted but to a moity, & is tenant in Common but with the other Feoffee. And ſo it is if the Diſcontinuee after the death of Tenant in tayle make a Charter of feoffment to the iſſue in tayle being within age who hath right, & to a ſtranger in fee, and make liuery to the Infant in name of both: the iſſue is not remitted to the whole, but to the halfe, for firſt he taketh the fee ſimple, and after the Remitter is wrought by operation of Law, and therefore can remit him but to a moitie. But of this ſufficient hath beene ſaid in the Chapter of Ioyntenants. Vid. Sect. 288.

Sect. 664.

CItem si teñ en taile enfeoffa son heire apparant, lheire esteant de pleine age al temps de feoffment, et puis le teñ en taile mozust, ceo nest remitter al heir, pur ceo que il fuit sa folly, que il esteant de pleine age voile prendre tiel feoffment, &c. Mes tiel folly ne poit estre adiudge en lheire esteãt deins age al temps del feoffment, &c.

ALso if Tenant in taile enfeoffe his heire apparant, the heire being of full age at the time of the feoffment, and after Tenant in taile dieth, this is no remitter to the heire, becauseit was his folly, that being of full age hee would take such feoffment, &c. but such folly cannot be adiudged in the heire being within age at the time of the feoffment, &c.

40.E.3.44.18. E.4.25.

CBy this feoffment albeit the heire apparent hath some benefit in the life of his Ancestor, yet is he thereby (beside his owne) subiect during his life to all charges and incumbrances made or suffered by his Ancestor. And therefore our Author saith well, Que il fuit son folly que il esteant de pleine age voile prender tiel feoffment, but folly shall not be iudged in one within age in respect of his tender yeares, and want of experience.

Sect. 665.

CHere Littleton putteth a case where the husband within age by the intermarriage may be remitted, albeit he gaineth but a freehold during the Couerture en auter droit.

Also here is to bee obserued that the estate which doth in this case worke the Remitter, could not haue continuance after the decease of the wife. And so on the other side, if the husband make a Discontinuance, and take backe an estate to him and his wife, during the life of the husband, this is a Remitter to the wife presently, albeit the estate is not by the limitation to haue continuance after the decease of the husband, which case is proued by the reason of the case which our Author here putteth. And here our Author obserueth the diuersity when the husband is within age, and when hee is of full age, for when he is within age, no folly can be adiudged in him, as in this Chapter hath beene often said.

CItem si tenant ẽ taile enfeoffa vn feme en fee, et mozust, et son issue deins age prent mesme la feme a feme, ceo est vn remitt̃ al enfant deins age, et la feme donqz nad rien, pur ceo que le baron et sa feme sont forsque come vn person en ley. Et en cest cas le baron ne poit suer briefe de Formedon, sinon que il voiloit suer enuers luy mesm̃, le quel serroit enconuenient, et pur cel cause la ley adiudgera lheire en son remitter, pur ceo que nul folly poit estr̃ adiudge en luy, esteãt deins

ALso if tenant in taile enfeoffe a woman in fee, and dyeth, and his issue within age taketh the same woman to wife, this is a Remitter to the infant within age, and the wife then hath nothing, for that the husband and his wife are but as one person in Law. And in this case the husband cãnot sue a writ of *Formedon*, vnlesse he wil sue against himselfe, which should bee inconuenient, and for this cause the Law adiudgeth the heire in his Remitter, for that no folly can bee adiudged in him being

deins age al temps delpouſels, &c. Et ſi lheire ſoit en ſon remitter per force de le taile, il enſuiſt per reaſon, q̃ la feme nad riens, &c. Car entant que le baron & ſa feñ ſont come vn perſon, la terre ne poit eſtre ſeuere per moities, & pur cel cauſe le baron eſt en ſon remitter de lentiertie: Mes autrement eſt ſi tiel heir̃ fuit de pleine age al temps de les eſpouſels, car donques le heire nad riens forſque en droit ſa feme, &c.

within age at the time of the Eſpouſels, &c. And if the Heire bee in his remitter by force of the entraile, it followeth by reaſon, that the wife hath nothing, &c. for inaſmuch as the Husband & Wife be as one perſon the land cannot be parted by moities, & for this cauſe the Huſband is in his remitter of the whole. But otherwiſe it is if ſuch Heire were of full age at the time of eſpouſels, for then the Heire hath nothing but in right of his Wife, &c.

Here is alſo to bee noted that preſently by the marriage within age, the Huſband is remitted, and the Freehold and Inheritance of the wife baniſhed cleane away.

¶ *Priſt meſme la feme al fem.* Here it is good to be ſeene what things are giuen to the Huſband by marriage. Firſt, it appeareth here by Littleton, that if a man taketh to wife a woman ſeiſed in fee (f) he gaineth by the intermarriage an eſtate of Freehold in her right, which eſtate is ſufficient to worke a Remitter, and yet the eſtate which the Huſband gaineth dependeth vpon vncertaintie, and conſiſteth in priuitie, (g) for if the wife be attainted of felony, the Lord by Eſcheat ſhall enter and put out the Huſband, otherwiſe it is if the felonie be committed after iſſue had. Alſo if the Huſband be attainted of felonie, the King gaineth no Freehold but a pernancie of the profits during the Couerture and the Freehold remaineth in the wife. (h) Secondly, if ſhe were poſſeſſed of a terme for yeares, yet he is poſſeſſed in her right, but he hath power to diſpoſe thereof by Grant or Demiſe, & if he be outlawed or attainted, they are gifts in Law.

(*) Vpon an Execution againſt the Huſband for his debt, the Sheriffe may ſell the terme during her life: but the Huſband can make no diſpoſition thereof by his Laſt Will. Alſo if he make no diſpoſition or forfeiture of it in his life, yet it is a gift in Law vnto him if he doe ſurviue his Wife, but if he make no diſpoſition and die before his Wife, ſhe ſhall haue it againe. And the ſame Law is of eſtates by Statute Merchant, Statute Staple, Elegit, Wardſhips and other Chattels reall ſi in poſſeſſion.

But if the Huſband charge the Chattel reall of his Wife, it ſhall not binde the Wife if ſhee ſurviue him.

If a Feme ſole be poſſeſſed of a Chattell reall, and be thereof diſpoſſeſſed, and then taketh Huſband, and the Wife dieth, and the Huſband ſurviueth, this right is not giuen to the Huſband by the intermarriage, but the Executors or Adminiſtrators of the Wife ſhall haue it, ſo it is if the Wife hath but a poſſibilitie.

In the ſame manner it is if the Wife be poſſeſſed of Cattels reals in auter droit, as Executrix or Adminiſtratrix or as Gardeine in Socage, &c. and ſhe intermarrieth, the Law maketh no gift of them to the Huſband, although he ſurviueth her. In the ſame manner if a woman grant a terme to her owne vſe, taketh Huſband, and dieth, the Huſband ſurviuing ſhall not haue this truſt, but the Executors or Adminiſtrators of the Wife, (i) for it conſiſteth in priuitie, and ſo hath it beene reſolued by the Juſtices. Chattels reals conſiſting meerely in Action the Huſband ſhall not haue by the intermarriage, vnleſſe he recouereth them in the life of the Wife, albeit he ſurviue the Wife, as a Writ of Right of Ward, a valore maritagii, a forfeiture of marriage, and the like, whereunto the Wife was intitled before the marriage.

But Chattels reals being of a mixt nature, viz. partly in poſſeſſion, and partly in Action, which happen during the Couerture, the Huſband ſhall haue by the intermarriage, if he ſurviue his Wife, albeit he reduceth them not into poſſeſſion in her lifetime: but if the Wife ſurviueth him, ſhe ſhall haue them. As if the Huſband be ſeiſed of a Rent ſeruice, Charge, or Seck, in the right of his Wife, the rent become due during the couerture, the Wife dieth, the Huſband ſhall haue the arrerages, but if the Wife ſurviue the Huſband, ſhe ſhall haue them, and not the Executors of the Huſband. So it is of an Aduowſon, if the Church become voyd during the Couerture, (k) he may haue a Quare impedit in his owne name, as ſome hold: but the Wife ſhall haue it if ſhe ſurviue him, and the Huſband, if he ſurviue her, Et ſic de ſimilibus.

(f) 13. H.4 6. Stanf l.7.b. 18 E.4.5.11.H.7.19. 10.H.6.11.7. H.6.9.b.

Vide Sect.58.

(g) 4.Aſſ.P.4. 4.E.3.Aſſ.166.

(h) Pl. Com. fol. 260.b. Dame Hales caſe. 1 Ro 343 50.Aſſ.5.38.H.6.23. 21.E.4.35 7.E.4.6. 7.H.7.2.10. H.6.11.

(*) Mich.26.& 27.Eliz. inter Amnor & Lodington in Briefe de error adiudge in both Courts, lib.8.fol.96.Mat. Manning.caſe. 7 H.6.fol.2.

Vide Sect 58.

(i) Paſch. 32. Eliz. in Cancellar. in Withams caſe. Hill.38.Eliz. in Cancell. in Waterhouſes caſe. Wroteſleys caſe, vbi ſup.

13.E.3. Quare Imp.57. 14.H.4.12.38.E.3.35.b. 50.E.3.13. 10.H.6.11.F.N.B.121. 22.H.6.25.29.E.3.40. 11.R.2.Account.49. 12.R.2. Briefe 639. 5.E.3.Execut.99.

(k) 50.E.3.13.28.H.6.9. 7 H.7.2.

26.E.3. 64. 10.H.6.11ª F.N.B.121.22.H.6.25. (l) Lib.4.fol.51.in Ognels case. Hil.17.El.Rot.457. in Com. Banco, Sharps case. 1 Cro 345 21.E.4.4.21.H.7.19. By.6,7. 11.H.7.4.26 H.8.7.2 Cr.111 43.E.3.10.3.H.6 23.37 4.H.6.5.14.E.2.Dct.73 5.E.2.abid.169.30.E.3 48.E.3.12.12.R.3.Brc. 638,639.16.E.4.8. 16.M.6.Brc.939. Bro.10 (m)43.E.3.8,V.10.H. 6.11. 39.E.3.17.

But if the arrerages had become due, or the Church had fallen voyd before the marriage, there they were merely in Action before the marriage, and therefore the Husband should not haue them by the Common Law, although he suruiued her. And so it is of Releekes, Mutatis mutandis: (l) But now by the Statute of 32.H.8.cap.37. if the Husband suruiue the Wife, he shall haue the arrerages as well incurred before the marriage, as after.

But the marriage is an absolute gift of all Chattels personals in possession in her owne right, whether the Husband suruiue the Wife or no; but if they be in action, as debts by Obligation, Contract, or otherwise, the Husband shall not haue them vnlesse he & his Wife recouer them. And of personall Goods en auter droit, as Executrix or Administratrix, &c. the marriage is no gift of them to the Husband, although he suruiue his Wife. 1 Cro 2

(m) If an Estray happen within the Mannor of the Wife, if the Husband die before seisure, the Wife shall haue it, for that the propertie was not in the Wife before seisure. 12.R.100. By 3

But as to personall Goods there is a diuersitie worthy of obseruation, between a propertie in personall goods, (as is afore said) and a bare possession, for if personall goods be bailed to a Feme, or if she finde goods, or if goods come to her hand as Executrix to a Bailiffe, and taketh a Husband, this bare possession is not giuen to the Husband, but the Action of Detinue must be brought against the Husband and Wife.

But now let vs heare Littleton.

Vide Sect.87 &c.

¶ *Le quel serra inconuenient.* This argument ab inconvenienti, our Author hath vsed in many places.

Sect. 666.

¶ Item, si Feme seisie de certaine terre en fee prent baron, le quel aliena mesme la terre a vn auter en Fee, lalienee lessa mesme la terre al Baron & la Feme pur terme de lour deux vies; sauant le reuersion al Lessor & a ses Heires, en cest cas la Feme est eins en son Remitter, & el est seisie en Fait en son demesne come de Fee, sicome el fuit deuant pur ceo que le repriscel del Estate serra adiudge en Ley le Fait le Baron, & nemy le Fait la Feme, issint nul folly poit estre adiudge en la Feme, que est couert en tiel Case, & en cest case le Lessor nad rien en le Reuersiõ, pur ceo que la Feme est seisie en Fee, &c.

ALso if a woman seised of certaine Land in Fee, taketh Husband, who alieneth the same Land to another in Fee, the Alienee letteth the same Land to the Husband & Wife for terme of their two liues, sauing the reuersion to the Lessor and to his Heires: In this case the Wife is in in her Remitter, and she is seised in Deed in her Demesne as of Fee, as shee was before, because the taking backe of the Estate shal be adiudged in Law the fact of the Husband, and not the fact of the Wife; so no folly cã be adiudged in the Wife, which is Couert in such Case. And in this Case the Lessor hath nothing in the Reuersion, for that the Wife is seised in Fee, &c.

21.E.3.25.29.E.3.43. 41.E.3.Remit.11.19.E. 3.Remit.14.35.Ass.12. 38.E.3.24.39.E.3.29.30. 41.E.3.17.46.E.3.20.b. 26.E.3.69.Vi.Sect.676. 11.R.2.Remit.12.44.E.3. 17.

¶ *La feme est en son Remitter.* By this it appeareth, That albeit there be no moities betweene Husband and Wife, yet this is a Remitter, presently, and standeth not vpon the Surviuor of the Wife, as some haue thought, for if the Estate gained by intermarriage be a sufficient Estate to worke a Remitter, â fortiori, an Estate made to the Husband and Wife shall worke a Remitter in the Wife. And so it is if Tenant in Taile infeoffe his Issue being within age, and his Wife in Fee, and dieth, this is a Remitter to the Issue presently, by the death of Tenant in Taile, though some haue thought the contrarie.

Here

Here also it appeareth, That no follie in this case can be adiudged in a feme Couert, for the taking backe of the Estate shall be adiudged in Law the act of the Husband.

The Marques of Winch. case, vbi supr.

Note in the case of the Feme Couert, she may be remitted in the like of the Discontinuor, because she hath a present right: but in the case of Tenant in taile, the Issue cannot be remitted in the life of the Discontinuor, because the Issue hath no right vntill his decease.

Sect. 667.

¶ Mes en cē case si le Lessour voile suer Action de Wast vers le Baron & sa Feme, pur ceo que le Baron auoit fait Wast, le Baron ne poit barrer le Lessor pur monstre ceo, que l'remisel ōl estat fait a luy & a son feme, fuit vn Remitter a sa feme, pur ceo que le Baron est estoppe adire ceo que est encounter s̄ feoffment, & son remisel demesne del estate p̄ terme de vie a luy & a sa feme. Et vncore le Lessor nad vn Reuersion, pur ceo que le Fee simple est en la feme. Et issint home poit veier vn matter en ceo case, que home serra estoppe per vn matter en fait, comēt que nul Escripture soit fait per Fait indent ou auterment.

But in this Case if the Lessor wil sue an Action of Wast against the husband & his Wife, for that the husband hath cōmitted Wast, the husbād cannot barre the Lessor by shewing this, that the taking backe of the Estate to him and to his wife, was a Remitter to his wife, because the husband is stopped to say that which is against his owne Feoffment, and taking backe of the Estate for terme of life to him and to his Wife. And yet the Lessor hath no reversion, for that the Fee simple is in the wife. And so a man may see one thing in this case, That a man shall bee stopped by matter in Fact, though there bee no Writing by Deed indented, or otherwise.

¶ *Vr ceo que Baron est estoppe adire, &c.*

¶ *Estoppe* commeth of the French word Estoupe, from whence the English word Stopped: and it is called an Estoppel or Conclusion, because a mans owne Act or acceptance stopperh or closeth vp his mouth to alleage or plead the truth: And Littletons case here proueth this description.

Lib. 2. f. 4. b. Goddards case V. Sect. 41. & 693, 695, 679.

Touching Estoppels, which is an excellēt & curious kinde of learning, it is to be obserued, that there be three kinde of Estoppels, viz. By matter of Record, by matter in writing, and by matter in Paiis.

(a) By matter of Record, viz. By Letters Patents, Fine, Recouerie, Pleading, taking of Cōtinuance, Confession, Imparlance, Warrant of Atturney, Admittāce.

(a) 43. Ass. 29. 8. H. 4. 7. 8. 22. Ass. 54. 15. E 3. Estop. 239, 4. E 3. ib. 133.

(b) By matter in Writing, as by Deed indented, by making of an Acquittance by Deed indented, or Deed poll, (c) by Defeasance by Deed indented or Deed poll.

(b) 4. H. 4. 1. 8. H. 7. 6. 13. H. 7. 14. 15. E. 4. 28. 41. E. 3, Estop. 12. 12. R. 2. ibid. 212.

(c) 8. R. 2. Estop. 283. 35. H. 6. 18 3. H. 6. 16. 16. H. 7. 5. 34. H. 6. 19. 14. H. 4. 25.

By matter in Paiis, as by Liuerie, by Entry, by Acceptance of Rent, by partition, and by Acceptance of an Estate as here in the case that Littleton putteth, whereof Littleton maketh a speciall obseruation, that a man shall be estopped by matter in the Countrey, without any Writing.

To make the Reader more capable of the learning of Estoppels, these fewe Rules, amongst others, are to be knowne.

(d) 33. H. 6 19. 50. 30. H. 6. 2. 31 E. 3. Estop. 240. 33. Ass. 18. 30. Ass. 51. 14. Ass. 9 18. E 4. 1.

(d) First, That euery Estoppell ought to be reciprocall, that is, to binde both parties, and this is the reason, that regularly a Stranger shal neither take aduantage, nor be bound by the Estoppell, (e) Priuies in Bloud, as the Heire, Priuies in Estate, as the Feoffee, Lessee, &c. Priuies in Law, as the Lords by Escheat: Tenant by the Curtesie, Tenant in Dower, the Incumbent

(e) 8. Ass. 53. Br. Fines 73. 8 H. 6. 17. 12 E. 3. 35. 38. E. 3 31. 20. E. 3. Estop. 187.

Incumbent of a Benefice, and others that come vnder by Act in Law, or in the Post, shall be bound and take aduantage of Estoppels, and that a Rebutter is a kinde of Estoppell.

(f) Secondly, that euery estoppell, because it concludeth a man to alleage the truth, must be certaine to euery intent, and not to be taken by argument or inference.

(g) Thirdly, Euery Estoppell ought to be a precise affirmation of that which maketh the Estoppell, and not be spoken impersonally, as if it be said, Vt dicitur, quia impersonalitas non concludit, nec ligat: impersonalis dicitur, quia sine persona. (h) Neither doth a recitall conclude, because it is no direct affirmation.

(i) Fourthly, a matter alleadged that is neither trauersable nor materiall, shall not estoppe.

(k) Fiftly, Regularly a man shall not be concluded by acceptance or the like, before his Title accrued.

(l) Sixthly, Estoppell against estoppell doth put the matter at large.

(m) Seuenthly, Matters alleaged by way of supposall in Counts, shall not conclude after Non-suit: otherwise it is after iudgement giuen, and after Non-suit, albeit the supposall in the Count shall not conclude, yet the Barre, Title, Replication, or other pleading of either partie, which is precisely alleaged, shall conclude after Non-suit, and hereby are the Bookes reconciled.

Eightly, Where the verity is apparant in the same Record, there the aduerse party shal not be estopped to take aduantage of the truth, for he cannot be estopped to alleage the truth, when the truth appeareth of Record. (n) If a Fine be leuied without any originall, it is voidable, but not void, but if an Originall be brought, and a Retraxit entred, and after that a Concord is made, or a Fine leuied, this is void, in respect the verity appeareth of Record. (o) An Impropriation is made after the death of an Incumbent, to a Bishop and his Successors, the Bishop by Indenture demiseth the Parsonage for fortie yeares, to begin after the death of the Incumbent, the Deane and Chapiter confirmeth it, the Incumbent dieth, this Demise shall not conclude, for that it appeareth that he had nothing in the Impropriation till after the death of the Incumbent.

(p) Ninthly, Where the Record of the estoppell doth run to the disabilitie or legitimation of the person, there all strangers shall take benefit of that Record, as Outlawrie, Excommengement, Profession, Attainder of Præmunire, of Felonie, &c. Bastardie, Mulierte, and shall conclude the partie, though they be strangers to the Record, Vide Littleton in cap. Villenage, Sect. 196 197. &c. But of a record concerning the name of the person, qualitie, or addition, no estranger shall take aduantage, because he shall not be bound by it. But Nota Reader, That in case of the Mulierte prima facie, an estranger shall take benefit of it, &c. But yet because he may be a Mulier, by the Ecclesiasticall Law, and a Bastard by the Common Law, therefore against such a certificate pleaded, the aduerse partie may alleage the speciall matter, & confesse the Certificate of the Bishop according to the Ecclesiasticall Law, & alleage further the speciall matter according to the Common Law, whereunto the adverse partie must answer, and so are the Bookes that treat of this matter, to be reconciled. But now let vs return to Littleton.

(f) 21. E. 4. 4. 23. Ass 14 17 H. 6. Estop. 273. 18. E. 3. 30. 7. H. 7. 6. & 16.
(g) 46 E. 3. 33. 29. Ass. 38 Pl. Com. 398.
(h) 35. H. 6. 33. 46. E. 3. 12 49 E. 3. 14 8. Ass. 3. 45. Ass. 5. 3. El. Dy. 196. 11 El. ibid. 280. 9. H. 6. 60.
(i) 5. E. 4. 7. 8. E. 4. 19. 10 E. 4. 12. 22. E. 4. 38. 32. Ass. 9. 35. H. 6. 20.
(k) 33. H. 6. 16. 4. E. 3. 22 6. H. 4. 7. 31. E. 1. Gard. 155. F. N. B. 142 E.
(l) 12 H. 7. 4. 20 H. 6. 29. 3. H. 4. 9. 41. E. 3. 4. 11. H. 4. 30.
(m) 2. R. 3. 14. 2. R. 2. Estoppel. 20. 40. E. 3. 21. 12. E. 4. 13 18. E. 3. 31. 35 44 E. 3. 45. 17. Ass. 27. 45 E. 3 2. 21. H. 7. 24. 5. E. 4. 7. 7 E. 4 19. 3 E. 4. 11. 4. E. 3. 54. 7. E 6. Br. Estop. 162. 11. H. 4. 30. 30. E. 3. 21. 31. Ass. 14.
(n) 37. Ass. 17. 38. H. 6. 12 5. El. Dy. 222.
(o) El. Dy. 244.
(p) Bract. fol. 420. 26. Ass. 64. 39. Ass. 10. 11. H. 4. 84. 7. H. 6. 33. Ass. 5. 11 E. 3. Estop. 229. 21. E. 3. 39. 19. R. 2. Estop. 282. 3. E. 3. ibid. 23. 33. E. 3. Estop. Stath. Lestat. de 9. H. 6. cap. 11. 30. H. 6. 2. Dost. & Stud. 69. 34. H. 6. 39. 18. E. 4. 1. b. 10. E. 4. 16.

Sect. 668.

CLA Feme pria destre receiue & soit receiue. Receipt, Receptio, commeth of the Latine Verbe Recipere, so called because the wife vpō the default of her husbād, is receiued as a feme sole alone, without her husband, to defend her right, and it is also called Defensio iuris: and in this case the wife may bee receiued by the (a) Statute, and yet (b) ancient Authors who wrote before the Statute, do speake of a kinde of Receit at the Cōmon Law. The Ciuilians call Resceit, Admissionem tertij pro suo interesse, which more properly is resembled to the receit of him in the reuersion or remainder, that is no partie to the writ.

20. E. 1. Defensio iuris.

(a) W. 2. cap. 3.
(b) Bract. fol. 393. Mir. lib. 3. cap. Exceptions.

CMEs si en action de Waste le baron fait default a le graund distresse, & la feme pria destre receiue & soit receiue, el monstra bien tout le matter, & coment el est en son Remitter, & el barrera le Lessor de son Action, &c.

BUt if in the Action of Waste the Husbād make default to the grand Distresse, and the Wife pray to be receiued, and is receiued, shee may well shew the whole matter, and how shee is in her Remitter, and shee shall barre the Lessor of his Action, &c.

Sect.

Sect. 669.

¶ Car en chescun cas lou feme est receiue p̄ default son baron, el pledera & auera m̄ laduantage en plee pledant, come el fuissoit feme sole, &c. Et coment q̄ lalienee fist le leas al baron & a sa feme, p̄ fait endent, vncore ceo est remitter a la fem̄. Et auxy coment que lalienee rendist mesme la terre al baron & a sa feme p̄ fine p̄ terme de lour vies, vncore ceo est vn remitter al feme, pur ceo que feme couert que prent estate per fine, ne serra my examine per les Justices, &c.

For in euery Case where the wife is received for default of her husband, she shall plead & haue the same aduātage in pleading, as she were a woman sole, &c. & albeit that the alienee made the lease to the husband and wife by deed indēted, yet this is a remitter to the wife: and also albeit the alienee rendereth the same land to the husband & his wife by fine for terme of their lives, yet this is a remitter to the wife, because a feme couert which takes an estate by fine shall not be examined by the Justices, &c.

¶ *Come el fuissoit feme sole, &c.*

In this Section foure things are to be vnderstood:

First, when a Feme couert is receiued, that she shall plead as if she were sole. And this is regularly true, yet holdeth not in all cases, (c) for if a Feme couert be receiued in an Assise, & plead a Record and false, therefore she shall not be adiudged a Disseisor, as shee should be if shee were sole, &c. So if a Feme couert only leaue a fine executory, & a Scire facias is brought against her and her husband, if she be receiued upon the default of her husband, shee shall barre the Conusee, which if she had been sole, shee could not dor, and in some other Cases.

(c) 3. Ass. 1.

17. Ass. 17. 29. E. 3. 43. 5. E. 3. Vouch. 178.

Secondly, that though the estate taken backe be by deed indēted, yet that shal not hinder the Remitter in case of a Feme couert, or an Infant.

Thirdly, that though it be by fine sur rēder, yet that shal not hinder the Remitter, because a Feme couert is not to bee examined vpon any fine, but when shee & her husband passe some estate or interest, or release her right by a fine of the Lands or Tenements.

Fourthly, if the husband leuie a fine of his wiues Lands, and the Conusee graunt & render the Land to the husband & wife, although the wife be not partie to the originall, nor to the Conusans, and therefore she ought not by the Law to take any present estate but by way of Remainder onely: yet here it is proued by Littleton, that the grant and render de facto to the wife in præsenti is not void, for then it could not worke a Remitter, but voidable by Writ of Error, and that auoidable estate doth worke a Remitter.

¶ *Ne serra my examine per les Iustices, &c.* The examination of a feme Couert ought to be secret, and the effect is to examine her whether shee be content to leuie a fine of such Lands (naming them particularly and distinctly, and the state that passeth by the fine) of her owne voluntary free will, and not by threats, menaces, or any other compulsorie meanes.

Trin. 27. El. Inter Owen & Morgan. Rot. 276. in Banco Comm. Lib. 2. f. 5. the Marquesse of Winchesters Case.
7. E. 3. 64. 13. E. 3. Voucher. 119.

Sect. 670.

¶ Et hic nota, que quant aſcun chose passera de la fem̄ que est couert de baron per force dun

And here note, that when any thing shall passe from the wife which is couert of a husband by

dun fine, ſiconie le baron & la fem ſeſont vn conuſance de droit a vn auter, &c. ou ſeſoyent vn grant & render a vn auter, ou releſſent per fine a auter, & ſic de ſimilibus, lou le droit del fem paſſeroit del feme p force de meſme le fine, en tous tiels caſes la fem ſerra examine deuaunt q̃ la fine ſoit accept pur ceo q̃ tiels fines concluderont tiels fems couerts a touts iours, &c. Mes lou riens eſt moue en le fine forſque tantſolement que le baron & la feme preignont eſtate per force de meſme le fine, ceo ne concluder la feme, pur ceo que en tiel cas el iammes ne ſerra my examine, &c.

force of a fine: As if the husband & wife make Conuſance of right to another, &c. or make a grant & render to another, or releaſe by fine vnto another, *& ſic de ſimilibus*, where the right of the wife ſhall paſſe from the wife by force of the ſame fine, in all ſuch caſes the wife ſhall be examined before that the fine bee taken, becauſe that ſuch fines ſhall conclude ſuch femes couerts for euer. But where nothing is moued in the fine but only that the husband and wife doe take an eſtate by force of the ſaid fine, this ſhall not conclude the wife, for that in ſuch caſe ſhe ſhall not bee at all examined, &c.

(d) 15.E.4.28. 24.E.3. 31. 42. E.3.6. 3.H.6.41. 20.E.3.tit. Cui in vita. 10. (*) 29.E.3.43. 46.E.3.5.

¶ *Quant aſcun choſe paſſera de la Feme couert, &c. per force dun fine, &c.* And of this opinion is (d) Littleton in our Bookes.

* Therefore if the husband and wife bee Tenants in ſpeciall taile, and they leuie a fine at the Common Law, and after the husband and wife take backe an eſtate to them and their heires, in this caſe the eſtate tayle is not barred, and yet againſt a fine leuied by her ſelfe ſhe cannot be remitted, becauſe thereupon ſhe was examined: but in that caſe if the Land deſcend to her iſſue he ſhall be remitted.

Sect. 671.

¶ Item, ſi tenant en taile diſcontinua le taile, & ad iſſue file, & mozuſt, & la file eſteant de pleine age p̃ent baron, & le diſcontinuee fait vn releas de ceo al baron & a ſa feme pur terme de lour vies, ceo eſt vn Remitter al feme, & la feme eſt eins per force de le taile, Cauſa qua ſupra.

ALſo if tenant in taile diſcontinue the taile, and hath iſſue a daughter & dieth, and the daughter being of full age taketh husbād and the Diſcontinuee make a releaſe of this to the husband and wife for terme of their liues, this is a Remitter to the wife, and the wife is in by force of the taile, *Cauſa qua ſupra, &c.*

¶ *Et la feme eſteant de plein age prent baron, &c.* Here it appeareth that her full age when ſhe tooke Baron is not materiall, but her couerture at the taking backe of the eſtate. And ſo note a diuerſitie betweene a Remitter and a Diſcent. For if a woman be diſſeiſed, and being of full age taketh husband, and then the Diſſeiſor dieth ſeiſed, this Diſcent ſhall binde the wife, albeit ſhe was couert when the Diſcent was caſt, becauſe ſhe was of full age when ſhe tooke husband. as appeareth before in the Chapter of Diſcents. But albeit the wife that hath an antient right, and being of full age taketh a husband, and the Diſcontinuee letteth the Land to the husband and wife for their liues, this is a Remitter to the wife. For Remitters to antient rights are fauoured in Law.

Sect.

Sect. 672.

CItem, ſi terre ſoit done a le baron & a ſa feme, a auer & tener a eux & a les heirs de lour deux corps engendres, & puis le baron aliena la terre en fee, & reprent eſtate a luy & a ſa fem pur terme de lour deux vies, en ceſt cas il eſt remitter en fait a le baron & a ſa feme maugre l'baron. Car il ne pout eſtr vn remitter en ceſt cas a la fem, ſinon que ſoit vn remitter a le Baron, pur ceo que le baron & ſa feme ſont tout vn meſme perſon en ley, coment que le baron eſt eſtoppe de claymer. Et pur ceo, ceo eſt vn remitter en luy enconter ſon alienation & ſon repriſel demeſne, come eſt dit adeuant.

ALſo if land bee given to the husband & to his wife, to have & to hold to them & to the heirs of their two bodies begotten, and after the husband alien the land in fee, and take backe an eſtate to him and to his wife for terme of their two lives, in this caſe this is a remitter in deed to the husband and to his wife, mauger the husband. For it cannot be a remitter in this caſe to the wife, unleſſe it be a remitter to the husband, becauſe the husband and wife are all one ſame perſon in Law, though the husband be ſtopped to claime it: And therefore this is a remitter againſt his owne alienation and repriſell, as is ſaid before.

CHEreit appeareth that the husband againſt his owne alienation, if he had taken the eſtate to him alone, could not haue been remitted. But when the eſtate is made to the husband and wife, albeit they be but one perſon in Law, and no moities betweene them, yet for that the wife cannot be remitted in this caſe, vnleſſe the husband be remitted alſo, & for that remitters, as hath beene often ſaid, are fauoured in Law becauſe thereby the more antient and better rights are reſtored againe, therefore in this caſe in iudgement of Law both husband and wife are remitted, which is worthy of great obſervation.

Sect. 673.

CItem, ſi terre ſoit done a vn feme en taile, le remainder a vn auter en tayle, le remainer a le tierce en taile, le remainder al quart en fee, & la fem prent baron, & le baron diſcontinua la terre en fee, per cel diſcontinuance touts les remainders ſont diſcontinues. Car ſi la fem deuiaſt ſans iſſue, ceux en le remainder naueront aſcun remedie forſque de ſuer lour briefes de Formedon en le remainder quant

ALſo if land bee giuen to a woman in taile, the remainder to another in taile, the remainder to the third in taile, the remainder to the fourth in fee, and the woman taketh husband, and the husband diſcontinue the land in fee, by this Diſcontinuance all the remainders are diſcontinued. For if the wife die without iſſue, they in the remainder ſhall not have any remedie but to ſue their writs of *Formedon* in the remainder, when

quant il auient a lour tẽps. Mes si apres tiel discontinuance, estate soit fait a le baron & la feme pur terme de lour deux vies, ou pur terme dauter vie, ou auter estate, &c. pur ceo que ceo est vn remitter al feme, ceo est aury vn remitter a touts ceux en le remainder. Car apres ceo que la feme que est en son remitter mozust sans issue, ceux en le remainder poyent enter, &c. sans ascun action suer, &c. En mesme le maner est de ceux que ount la reuersion apres tiel tailes.

it comes to their times. But if after such discontinuance, an estate be made to the husband and wife for terme of their two liues, or for terme of another mans life, or other estate, &c. for that this is a remitter to the wife, this is also a remitter to all them in the remainder. For after that the wife which is in her remitter be dead without issue, they in the remainder may enter, &c. without any action suing, &c. In the same manner is it of those which haue the reuersion after such entailes.

41.E.3.17. 41.Ass.1.36. Ass.p.4.

LIttleton hauing spoken of Remitters to the issue in taile, who is priuie in bloud, and to the wife who is priuie in person, now he speaketh of Remitters to them in reuersion or remainder expectant, upon an estate taile who are priuie in estate. And this case proueth the wife is remitted presently, for the equitie of the Law requireth that as the discontinuance of the estate in taile is a discontinuance of the reuersion or remainder, so, that the Remitter to the estate in taile, should be a Remitter to them in the reuersion or remainder.

44.Ass.p.15. 44.E.3.30.

Tenant for life the remainder to A. in taile, the remainder to B. in fee, Tenant for life is disseised, a collaterall Ancestor of A. releaseth with warrantie and dieth, whereby the estate taile is barred, the Tenant for life re-entreth, the Disseisor hath an estate in fee simple determinable upon the state taile, and the remainder of B. is reuested in him, & so note in this case the estate for life, and the remainder in fee are reuested and remitted, and an estate of inheritance left in the disseisor. If a Fine be leuied sur grant & render to one for life or in taile, the remainder in fee, if Tenant for life, or in taile, execute the estate for life or in taile, this is an execution of the remainder.

20.E.3.Aid.29.

Vid. Pl. Com. 489. Nichols case & fol. 553. in Walsingams case. 17.Eliz. Dier. 344. 25.E.3.48.tit. Receit. 28.49.E.3.16.

A gift in taile is made to B. the remainder to C. in fee, B. discontinueth and taketh backe an estate in taile, the remainder in fee to the King by deed inrolled, Tenant in taile dieth, his issue is remitted, and consequently the remainder, as Littleton here saith, and the diuersity is (a) betweene an act in Law, for that may deuest an estate out of the King, & a tortious act, or entry, or a false and a feined recouery against Tenãt for life or in taile, which shall neuer deuest any estate, remainder, or reuersion out of the King. (b) But a recouery by good title against Tenant for life, or in taile, where the remainder is to the King by defeasible title shall deuest the remainder out of the King, and restore and remit the right owners.

(a) Seignior Staffords case, Lib. 8. fol. 76. b.
(b) Chomleys case, lib. 2. 53. 7. R. 2. Aide le Roy. 41.22 E.3.7.

Sect. 674, 675.

FEint & faux action. 1. Actio ficta & falsa, But hereof Littleton speaketh himselfe in this Chapter.

Quod ei deforceat, is a Writ that is giuen by (c) Statute to any Tenant for life or in tayle vpon a Recouery by default against them in a Præcipe, and lyeth against the

(c) Westm. 2. cap. 4. an. 13. E. 1.

ITem, si hom̃ lessa vn mease a vn feme pur terme de sa vie, sauant l'reuersion al lessour, & puis vn suist vn feint & faux action enuers la feme & recouerast le mease enuers luy per default, issint que la

ALso if a man let a house to a womã for terme of her life, sauing the reuersion to the Lessor, & after one sue a feyned and false actiõ against the woman, & recouereth the house against her by default, so as the

la feñ puit auer enuers luy vn Quod ei deforceat, ſolonqz le Statute de Weſtm 2. oze le reuerſion le Leſſoz eſt diſcõtinue, iſſint que il ne pout auer alcun action de waſt. Mes ẽ ceſt caſe ſi la feñ pzent baron, & celuy q̃ recouerаſt leſſa le meaſe al baron & a ſa feñ pur terme de lour deux vies, la feñ eſt eins en ſon remitter per force ỏl pzimer leaſe.

woman may haue againſt him a *Quod ei deforceat*, according to the ſtatute of Weſtm. 2. now the reuerſiõ of the Leſſor is diſcontinued, ſo that he cãnot haue any action of waſte. But in this caſe if the womã take huſband, & he which recouereth let the houſe to the huſband & his wife for term of their two lives the wife is in her Remitter by force of the firſt Leaſe.

recouerоz and his heires in which caſe the particular Tenant was without remedy at the Common Law, becauſe hée could not haue a Writ of Right. And it is called a Quod ei deforceat, foz that they are part of the wozds of that Writ, viz. Præcipe A. quod, &c. reddat B. vnum meſuagium, &c. quod clamat eſſe jus & maritagium ſuum, & quod idem A. ei iniuſtè deforceat.

Bracton, lib. 4. 367. Fleta, lib. 5. cap. 22. & lib. 6. cap. 14. 7 E. 3. 62. F.N.B. 155.

Sect. 675.

¶ Et ſi le baron & ſa feme font Waſt, l' pzimer leſſoz auera enuers eux bẽe de Waſt, pur ceo q̃ entant que la feñ eſt en ſon remitter, il eſt remiſe a ſon reẽcion. Mes ſemble en ceſt cas ſi celuy q̃ recouerаſt per l' faux action, voit pozter auter bẽe de Waſt enuers le Baron & ſa Feñ, l' baron nad auter remedy enũs luy, mes de faire default a la graund diſtres, &c. & cauſer la feñ deſtr̃ receiue, & ỏ pledr tel matter ẽuers le ſecõd leſſoz, & monſtrer coment laction per que il recouerаſt fuit faux & feint ẽ ley, &c. iſſint l' fẽe poit luy barrer, &c.

AND if the huſbãd & wife make waſt the firſt Leſſor ſhall haue a writ of Waſte againſt them, for that inaſmuch as the wife is in her remitter, he is remitted to his reuerſion. But it ſeemeth in this caſe if he that recouereth by the falſe actiõ will bring another writ of waſte againſt the huſbãd & his wife, the huſband hath no other remedy againſt him but to make default to the grand diſtreſſe, &c. & cauſe the wife to be receiued, & to plead this matter againſt the ſecond Leſſor, & ſhew how the actiõ whereby he recouered was falſe & fained in law, &c. ſo the wife may bar him.

¶ *Recouerаſt, &c. per default.* There hath bẽne a queſtion in our bookes vpon theſe wozds (By default) as foz example, whether a recouerie had by default in an action of Waſte againſt Tenant in Dower, oz by the Courteſie, a Quod ei deforceat lyeth by the ſaid Statute. And diuers hold opinion, that in that caſe no Quod ei deforceat lyeth, foz that iudgement is not giuen by default, foz notwithſtanding the default, there goeth out a Writ to enquire De vaſto facto, & quod vaſtum prædictus A. (le defendant) fecit. So as the Defendant may giue euidence, and the Iurozs may finde foz the Defendant, that no Waſte was done: as in the aſſiſe albeit it bée awarded by Default, yet may the Tenant giue euidence, and the Recognitozs of the aſſiſe may finde foz the Tenant, and therefoze in thoſe caſes, the Defendant oz Tenant Non admittit per defaltam, as the Statute and Littleton ſpeaketh, and they cite F. N. B. in the point.

W. 2. cap. 4.

F.N.B. fol. 155. E.

Secondly, they hold that a Quod ei deforceat lyeth where the Tenant can haue no remedie by attaint, but in this caſe (ſay they) an attaint doth lye.

2. H. 4. 2. 21. H. 6. 56. 41. E. 3. 8. 3. H. 6. 29. 21. E. 3. 19.

Thirdly, they hold, that in an action of Waſte, although

though it be brought against a Tenant in Dower or tenāt by the Courtesie that haue a frē-hold, yet the dammages are the principall, for they were recouerable against Tenāt in Dower and by the Courtesie by the Common Law, and the Statute of Gloucester gaue the place wasted but for a penaltie, so as the nature of the Action (say they) remaineth still to be personall, for that the dammages are the principall, (d) and in proofe hereof they cite diuers authorities in Law. And if two bring an action of Waste, the release of one of them is a good barre against the other. (e) and so resolued by the whole Court: which proueth (say they) that the dammages are the principall, for if the Land were the principall, the release of one of them should not barre the other, no more than in an Assise, a writ of Ward, and Ejectione firmæ, &c.

(d) 34.H.6.7.40.E.3.37. & 38. E.3.

(e) 9.H.5.15.

30.H. 6.tit.Bar.59.

Lastly, they say, That in actions where dammages are to be recouered, and the Land is the Principall, the Demandant neuer counteth to dammages, and yet shall recouer them: but in an action of Waste the Plaintiffe counteth to his dammage, & if the dammages be the Principall, then clerely no Quod ei deforceat lieth.

Others doe hold the contrarie; and as to the first they say, That albeit that in the Writ of Waste iudgement is not only giuen upon the default, yet the default is the principall, and the cause of awarding of the Writ to enquire of the Waste as an incident thereunto: and the Law alwayes hath respect to the first and principall cause, and therefore vpon such a Recouerie (*) a Writ of Deceit lieth, and that Writ lieth not but where the Recouerie is by default. So in an action of Waste against the Husband & Wife, vpon the default of the husband the wife shal be receiued, and yet the Statute there speaketh also per defaltam. So vpon such a recouerie in Waste against the Baron & Feme by default, the Wife shall haue a Cui in vita by the Statute, and it speaketh where the Recouerie is per defaltam. And albeit the Defendant may giue in euidence, if he knoweth it, yet when he makes default the Law presumeth he knoweth not of it, and it may be that he in truth knew not of it, & therefore it is reason, that seeing the Statute, that is a beneficiall Statute, hath giuen it him, that he be admitted to his Quod ei deforceat, in which Writ the truth and right shall be tried. And so it is of a recouerie by default in an assise, albeit the Recognitors of the assise giue a verdict, a Quod ei deforceat lieth. And all this as to this point was resolued by the whole Court of Common Pleas, and so the doubt in 41.E.3.8. well resolued. Note, if Tenant for life make default after default, and he in the reuersion is receiued and plead to issue, and it is found by verdict for the Demandant, the default and the verdict are causes of the Iudgement, and yet the Tenant shall haue a Quod ei deforceat.

(*) 17.E.3.58.29.E.3. 42.F.N.B.98.b.12.H.4.4. 19.E.2. Disceit 56. W.2. cap.3.3.H.4.fol.1.

W.2.cap.3.9.E.1.16.

41.E.3.8. b.2 H.4.2. 21.H.6.56. 44.E.3.42. Br. tit. Quod ei deforc.4. Pasch.33.El. Rot.1125. inter Ed. Elmer. & El. sa feme, ten. en Dowerdemandants, & Wil. Thacker ten. in Quod ei deforceat.

As to the second obiection, That the Defendant may haue an attaint, first, it was vtterly denied of the other part, (f) that an attaint did lie in this case, for though it be taken by the Oath of twelue men, yet it is but an enquest of Office, whereupon no attaint did lye on either partie, as vpon an enquirie of Collusion, although it be by one Jurie, nor vpon a verdict in a Quale jus. Secondly, Admitting that an attaint did lie in that case, yet it followeth not ex Consequenti, that a Quod ei deforceat did not lie, (g) for if an assise bee taken by default, a Quod ei deforceat doth lie, and yet the partie may haue an attaint, for this is no Enquest of Office, but a Recognition by the Recognitors of an assise, who were returned the first day, and not returned upon the awarding of the assise by default. And as to the second Obiection, of this opinion was the whole Court in Edward Elmers case aboue mentioned. As to the third Obiection. That the dammages should bee the principall, because they were at the Common Law, that is an argumēt (say the other side) that they are more ancient, but not that they are more principall, and treble dammages were not at the Cōmon Law, (for the Common Law neuer giueth more dammage than the losse amounteth vnto) but are giuen by the Statute of Gloucester, but the place wasted is worthier being in the Realtie, than dammages that be in the personalitie, Et omne majus dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius, & à digniori debet fieri denominatio. And it is confessed, That in an action of Waste against Tenant for life, or for yeares, the place wasted is the principall, because the Statute of Gloucester doth giue the place wasted and treble dammages at one time: for no prohibition or action of Waste lay against them at the Common Law, & in an action of Waste, if the Defendant confesse the action, the Plaintiffe may haue iudgement for the place wasted, & release the dammages, which proueth (and so Fitzherbert collecteth) that the dammages are not the principall, for a man shall neuer release the principall, and haue iudgement of the accessorie: and an action of Waste against Tenant for life, is as reall as an action against Tenant in Dower. And as to the case of 9.H.5. cited on the other side, it was answered that it was an action in the Tenuit, which is only in the personalitie, & then the Release of the one doth bar both, neither could summons and seuerance lie in that case, (h) but in an action of Waste (in the Tenet) either against Tenant for life or for yeares, the release of the one doth not barre the other, and in both those cases summons and seuerance doth lie, and this point was also resolued accordingly in Edward Elmers Case. But when these three points were resolued by the Court for the Demandant, then the Councell of the Tenant moued in arrest of iudgemēt another point.

(f) 33.E.3.Quod ei defor. Pl.vlt.F.N.B.156. V. Flet l.5. c.21,48.E.3. 19.40.Ass.23.33.H.6.25. 39.H.6.1.F.N.B.107.

(g) 17.E.2.Attaint 69. 21.H.6.56.34.H.6.12.

34.H.6.7. Wast.50.

(h) 6.E.3.47. 48.E.3. 19.

viz.

viz. That the iudgement was giuen upon a Nihil dicit, which is alwayes after apparence, & not per defaltam, and thereupon iudgement was stayed.

But to return to Littleton. Here he openeth a secret of Law, for the cause of this Remitter is, for that the Tenãt for life in this case might haue a Quod ei deforceat, for so Littleton saith: Issint que il poit auer Quod ei deforceat: Now it appeareth by our Bookes, That the Tenant for life at the Common Law was remediless, because he could not haue (as hath beene said) a writ of Right, & consequently the Feme couert in this case could not bee remitted by the taking of an Estate to her husband and her, because her right was remediless, and could haue no action. But when an act of Parliament or a Custome doth alter the reason and cause thereof, thereby the Common Law it selfe is altered, if the act of Parliament and Custome be pursued, for Alterata causa & ratione Legis, alteratur & Lex, & cessante causa seu ratione Legis cessat & Lex: as in this case the Statute of W. 2. giuing remedie to this Feme Tenant for life, in this it giueth her abilitie to bee remitted, because her right is not now remediless, but she hath an action to recouer it.

Vide for the Cases vpon this ground. 14. H. 7. 11. per Fineux. 27. H. 8. 4. b. Aid. 35. H. 6. Gard. 72. 29 E. 3. 5. per Wilbie Custome. Lib 3. fol. 86. Iustice Windhams cases a. & b.

And Littleton warily putteth his case, That the recouerie was had against the Feme while she was sole, for there was a time when it was a question, Whether a Recouerie being had by default against the Husband and wife, (the wife being Tenant for life) the said Statute gaue a Quod ei deforceat to the Husband & wife, for that the Statute gaue it against Tenant in Dower and tenant for life, &c. and here the husband is not Tenant for life, but seised in the right of his wife, and therefore out of the Statute: and of this opinion is one (g) Booke, but (Apices juris non sunt jura, & parùm differunt quæ re concordant) the contrarie hath beene adiudged, and so that point is now in peace: and the like in case of receit for him in reuersion. But if the Husband and wife lose by default, and the Husband die, the wife shall not haue a Quod ei deforceat, for a Cui in vita is giuen to her in that case by a former Statute, viz. W. 2. cap. 3. These things are worthy of due obseruation, and points of excellent learning, and Littleton in our Bookes speakes of another kinde of Quod ei deforceat at the Common Law, vpon a Disseisin, which you may read. But now let vs heare him in his Booke.

(g) 4. E. 3. 38. 33. E. 3. Auowrie 255. 5. E. 3. 4. 33 E. 3. Auowr. 255. F. N. B. 156. a. 5. E. 3. 5. 2. E. 4. 13. F. N. B. 156. C. 33. H. 6. 46. 2. E. 4. 11, 19. E. 4. 2.

¶ *Le reuersion est discontinue, issint que il ne poit auer Action de Waste.*

Here is appeareth, That when the reuersion is deuested, the Lessor cannot haue an Action of Waste, because the Writ is, That the Lessée did waste ad exheredationem of the Lessor and that Inheritance must continue at the time of the action brought: And it is to bee obserued, That in an actiõ of Waste brought by the Lessor against the Lessée, the Lessée in respect of the priuitie cannot plead generally, Riens en le Reuersion, viz. (h) That the Lessor hath nothing in the Reuersion, but he must shew how and by what meanes the Reuersion is deuested out of him: & this holdeth (as hath been said) betweene the Lessor and the Lessée: but if the Grantee of a Reuersion bringeth an action of Waste, the Lessée may plead generally, That he hath nothing in the reuersion. And yet in some speciall cases an action of Waste shall lie, albeit the Lessor had nothing in the Reuersion at the time of the Waste done. As if Tenãt for life make a Feoffement in Fee vpon condition, & waste is done, and after the Lessée re-enter for the condition broken, In this case the Lessor shall haue an action of Waste. And so if a Bishop make a Lease for life or yeares, and the Bishop die, the Lessée, the Sea being void, doth waste, the Successor shall haue an action of Waste. So if Lessée for life be disseised, and Waste is done, the Lessée re-enter, an action of Waste shall bee maintained against the Lessée, and so in like cases: & yet in none of these cases the Plaintiffe in the action of Waste had any thing in the Reuersion at the time of the Waste made, but these especiall cases haue their seuerall and especiall reasons, as the learned Reader will easily finde out.

45. E. 3. 21. 44. E. 3. 34. 35. F. N. B. 60. 23. H. 8. tit. Wast. Br. 138.

(h) 46. E. 3. 20. 8. H. 6. 13, 30. H. 6. 7.

Here note, That albeit the action be false & feigned, yet is the Recouerie so much respected in Law, as it worketh a Discontinuance. (i) But if Tenant for life suffer a common Recouerie, or any other Recouerie by coulne and consent betweene the Tenant for life and the Recoueror, this is a forfeiture of his estate, and he in the Reuersion may presently enter for the forfeiture. Since our author wrote, the Statute of 14. El. cap. 8. hath beene made concerning this matter, which is to be considered, (k) and hath beene well construed and expounded, and needs not here to be repeated.

(i) 5. Ass. Pl. 3. 5. E. 3. Ent. Cong. 42. 15. E. 3. Age 95. 41. E. 3. 18. per Finchden. 22. E. 3. 2. b. Lib. 1. fol. 15. Sir Will. Pelhams case 14. El. c. 8.

(k) Lib. 3. f. 60. lib. 1. f. 15. Vide also Jennings case. Rep. 10. f. 44

And it is to be obserued, that although the Discontinuance groweth by matter of Record, yet the Remitter may be wrought by matter in Paiis: And of the residue of these two Sections sufficient hath beene said before.

Sect. 676.

¶ Item, si le baron discontinua le terre de sa feme, et puis repryst estate a luy & a sa feme, et al tierce person pur term de lour vies, ou en fee, ceo nest vn remitter a la feme, forsque quant a la moity, & pur lauter moity el couient apres la mort son baron de suer vn bryefe de Cui in vita.

ALso if the Husband discontinue the land of his Wife, and after taketh backe an estate to him & to his Wife, & to a third person for terme of their liues, or in fee, this is no Remitter to the wife, but as to the moitie, and for the other moitie shee must after the death of her husbād sue a writ of *Cui in vita.*

44.E.3.17.44. Ass.2. 43.Ass.3. Vid.Sect.666

¶ *Ceo nest remitter forsque quant al moitie, &c.* Albeit there is Authoritie in our Bookes to the contrarie, yet the Law is taken, as Littleton here holdeth it; and as before it appeareth in the like case in this Chapter, and for the reason therein expressed.

Sect. 677.

¶ Et *puis le baron reuient & agrea, &c.* In this case the estate is in the Feme Couert presently by the liuerie before any agreement by the Husband, & of this opinion is Littleton in our Bookes.

25.E.4.1.b.7.H.4.17. 1.H.7.16.b.39.F.3.30. 27.H.8.24.

¶ *A la ouster le mere.* If hee had beene within the Realme, it doth not alter the case.

¶ *Quare en cest case si le baron, &c.* Here is a question moued by Littleton, whether the disagreement of the Husband shall ouste the Wife of her Remitter. And it seemeth that the disagreement shall not deuest the Remitter: First, because the state made to the Wife which wrought the Remitter is banished & wholly defeated, and therefore no disagreement of the Husband can deuest the state gained by the lease, which by the Remitter was deuested before.

Secondly, for that the Law hauing once restored her antient and better right will not suffer the disagreement of the Husband to deuest it out of her, and to reuiue the Dis-

¶ Item, si le baron discõtinue la teñ sa feme, & ala ouster le mere, & le discontinuee lessa mesme la terre al feñ pur termñ de sa vie, et liuer a luy seisin, et puis le baron reuyent, et agreea a cel liuerie de seisin, cõ est vn Remitter a la Feme, et vncore si la Feme fuissoit sole al temps de le leas fait a luy, ceo ne serroit a luy vn Remitter. Mes entant que el fuit couert de baron al temps de la leas, et de le liuerie de seisin fait a luy, coment que el pryst solement le liuerie de seisin, ceo fuit vn Remitter a luy, pur ceo que feme couert serra adiudge sicome

ALso if the Husband discontinue the Land of his Wife, and goeth beyond sea, and the Discontinuee let the same Land to the Wife for terme of her life, and deliuer to her seisin, and after the husbād commeth backe, and agreeth to this Liuerie of seisin, this is a Remitter to the Wife, and yet, if the Wife had beene sole at the time of the lease made to her, this should not be to her a Remitter, but inasmuch as she was couert baron at the time of the Lease, and Liuerie of seisin made unto her, albeit shee taketh only the liuerie of seisin, this was a Remitter

ſicome enfant deins age en tiel cas, &c. Quære en ceſt cas ſi l' baron quãt il reuient, voil diſagree a l' leas & liuery de ſeiſin fait a ſon feme en ſon abſence, ſi ceo ouſtera ſon feme de ſon Remitter, ou nemy, &c. to her becauſe a Feme couert ſhall be adiudged as an Infant within age in ſuch a caſe, &c. *Quære* in this caſe if the Husband when hee comes backe will diſagree to the leaſe and liuery of ſeiſin made to his wife in his abſence, if this ſhall ouſte his wife of her Remitter, or not, &c.

continuance and reueſt the wrongfull eſtate in the Diſcontinuee.

Thirdly, for that Remitters tending to the aduancement of ancient Rights are fauoured in Law. 41. E. 3. 18.

And ſo it is for the ſame cauſes, if the wife ſuruiue her husband, ſhe cannot claime in by the purchaſe made during the couerture, but the Law adiudgeth her in her better right. But if both eſtates be waiuable, there albeit the wife prima facie is remitted, yet after the deceaſe of her husband, ſhe may elect which of the eſtates ſhee will. As if Lands be giuen to the Husband and wife, and their heires, the husband make a feoffment in fee, the feoffee giueth the Land to the husband and wife and the heires of their two bodies, the husband dieth. In this caſe the wife may elect which of the eſtates ſhee will, for both eſtates are waiuable, and her time of election and power of wayuer accrewed to her firſt after the deceaſe of her husband. If Lands bee giuen to a man and the heires females of his body, and he maketh a feoffment in fee, and take backe an eſtate to him and his heires, and dieth hauing iſſue a daughter, leauing his wife groſſement enſeint with a ſonne and dieth, the daughter is remitted, and albeit the Sonne be afterward borne, hee ſhall not, deueſt the Remitter. 18. Eliz. Dier. 351.

Sect. 678.

¶ ITem, ſi le baron diſcontinua les tenements ſon feñ, & le diſcõtinuee eſt diſſeiſie, & puis le diſſeiſor leſſa meſmes les tenements a l' baron & a ſon feñ pur terñ de vie, ceo eſt vn remitter a la feñ. Mes ſi le Baron & ſon Feñ fueront de couin & conſent que l' diſſeiſin doit eſte fait donques il neſt Remitter a ſon feñ pur ceo q̃ el eſt diſſeiſereſſe: Mes ſi l' baron fuit de couin & conſent a le diſſeiſin, & nemy la feme, donqz

ALſo if the Huſband diſcontinue the Lands of his wife, & the diſcontinuee is diſſeiſed, & after the Diſſeiſor letteth the ſame lands to the huſband and Wife for terme of life, this is a Remitter to the wife. But if the huſband & his wife were of couine and conſent that the diſſeiſin ſhould be made, then it is no remitter to his Wife becauſe ſhe is a Diſſeiſereſſe: But if the huſband were of couin & conſent to the Diſſeiſin, and not the Wife

¶ *ET puis le diſſeiſor leſſa meſme les tenements, &c.* Note ſo much are remitters fauoured in law that the ſtate made by the diſſeiſor (which commeth to the Land by wrong, and upon whom the entry of the Diſcõtinuee is lawfull) doth remit the wife, and deueſteth all out of the Diſcontinuee, albeit he hath a warrantie of the Lãd. 18. E. 4. 1. b.

¶ *Mes ſi le Baron & Feme fuer' de couin & conſent, &c.* Here it appeareth that couin and conſent of the husband and wife doth hinder the remitter of the wife for couine & conſent in many caſes to doe a wrong, doth choake a meere right, and the ill manner doth make a good matter vnlawfull. 18. E. 4. vbi ſupra.

¶ *Couin.* Couina commeth of the French word Conuine, and is a ſecret aſſent (c) Pl. Com. 546. in Wimbiſhes caſe. † Rep. 9. fol. 109. Iſabam's caſe.

determined in the hearts of two or more to the defrauding & preiudice of another.

44.E.3.46. 11.H.4.60. 44.Ass.29.19.H.8.12. 18.H.8.5. 11.E.4.2. 7.H.7.11.

A woman is lawfully intitled to haue dower, and she is of couine and cõsent, that one

tiel leas fait al feñ est vn remitter, pur ceo que nul default fuit en la feme.

then such Lease made to the wife is a Remitter, for that no default was in the wife.

shall disseise the Tenant of the Land, against whom shee may recouer her lawfull Dower all which is done accordingly, the Tenant may lawfully enter upon her, and auoid the recouery in respect of the couine. But if a Disseisor, Intrudor or abator doe endow a woman that hath lawfull title of Dower, this is good, and shall binde him that right hath, if there were no such couine or consent before the Disseisin, Abatement, or Intrusion.

41.Ass.p.28.25.Ass.p.1. 27.Ass.74. 15.E.4.4.2. 12.Ass.p.10.

And so it is in all cases where a man hath a rightfull & iust cause of Action, yet if he of couine and consent doe raise up a Tenant by wrong against whom he may recouer, the couine doth suffocate the right so as the recouery though it be upon a good title shall not binde, or restore the demandant to his right.

11.E.4.2. 15.E.4.23. 14.H.8.12. 33.H.6.5. 12.E.4.21.b.

If Tenant in taile and his issue disseise the discontinuée to the vse of the Father, and the Father dieth, & the Land descendeth to the issue, he is not remitted against the Discontinuée in respect he was priuie and partie to the wrong, but in respect of all others he is remitted, & shall deraigne the first warrantie. And so note a man may bee remitted against one, and not against another.

F.N.B.179.g. 12.E.4.9.35.Ass.5. 44.E.3.9.23. 13.Ass.1. Temps E.1. Waste 128. 16.Ass.p.7.21.E.4.53. 21.H.7.35. 3.H.4.17.

A. and B. Ioyntenants be intitled to a reall action against the heire of the Disseisor, A. cause the heire to be disseised, against whom A. and B. recouer and sue execution, B. is remitted for that he was not partie to the couine, and shall hold in common with A. but A. is not remitted for the reason that Littleton here sheweth.

¶ *Pur ceo que el est disseisoresse.* Nota, It is regularly true that a feme Couert cannot be a Disseisoresse by her commandement or procurement precedent, nor by her assent or agreement subsequent, but by her actuall entry, or proper act, she may be a Disseisoresse. And therfore some doe hold that Littleton must be intended, that the husband & wife were present when the Disseisin was done, and others do hold that Littleton is good Law, albeit she were absent, for that if her procurement or agreement be to doe a wrong, to cause a Remitter vnto her in this speciall case she shall faile of her end, and remitted she shall not be, but in this speciall case she shall be holden as a Disseisoresse by her couine and consent quatenus to hinder the Remitter. And here it appeareth, that albeit the husband be of couine and consent, &c. yet if the wife were not of couine and consent also, she shall be remitted, because as Littleton saith, there was no default in the wife.

Sect. 679.

¶ Item, si tiel discontinuee fesoit estate de franktenement al baron & a son feme per fait endent, sur condition, &c. reseruant al discontinuee vn certaine rent, & pur default de payment vn reentry, & pur ceo que le rent est aderere, le discontinuee enter, donques de cel entrie le fem auera vn Assise de Nouel disseisin, apres la mort son baron enuers le discontinuee, pur ceo que le condition fuit tout oustrement aniente, entant que la feme fuit en &c remitter, vncore le baron ouesque sa feme

ALso if such discontinuee make an estate of freehold to the husband and wife by Deed indented upon cõdition, s. reseruing to the discontinuee a certain rent, & for default of paymẽt a re-entrie, and for that the rent is behind the discontinuee enter, then for this entrie the wife shal have an Assise of *Nouel disseisin*, after the death of her Husband against the Discontinuee, because the condition was altogether taken away, inasmuch as the Wife was in her Remitter, yet the husband with his wife can-

feme ne poient auer Assise, pur ceo que le baron est estoppe, &c.

not haue an Assise because the husband is estopped, &c.

IT is hereby to be obserued, that the wife is presently remitted, and that the conditions, and rents, and all other things annexed to, or reserued vpon the state (that is vanished and defeated by the Remitter) are defeated also.

Pl. Com in Amy Townesheads Case. 12, R. 2. tit. Remitter 12.

Sect. 680, & 681.

ITem, si le baron discontinua les tenements sa feme, & reprist estate a luy pur terme de sa vie, le remainder apres son decease a sa feme pur terme de sa vie, en cest cas ceo nest vn remitter a la feme durant la vie le baron, pur ceo que durant la vie le baron, la feme nad riens en le franktenement. Mes si en ceo cas la feme survesquist le baron, ceo est vn remitter a la feme, pur ceo que vn franktenement en ley est iect sur luy maugre le soen. Et entant que el ne poit auer action enuers nul auter person, & enuers luy mesme el ne poit auer action, pur ceo el est en ẽ Remitter. Car en cest cas, coment que la feñ ne entra pas ẽ les tenements, vncore vn estrange que ad cause de auer action, poit suer son action enuers la feme de mesmes les tenements, pur ceo que el est tenant en ley, coment que el ne soit tenant en fait.

ALso if the Husband discontinue the tenements of his wife, and take backe an estate to him for life, the remainder after his decease to his wife for terme of her life, in this case this is no Remitter to the wife during the life of the husbād, for that during the life of the husbād the wife hath nothing in the freehold. But if in this case the Wife suruiueth the Husband, this is a Remitter to the Wife, because a freehold in Law is cast upon her against her will. And inasmuch as she cañot hāue an actiō against any other person, & against her selfe shee cañot haue an Actiō, therefore she is in her remitter. For in this case although the wife doth not enter into the tenements, yet a stranger which hath cause to haue an Action, may sue his Action against the Wife for the same tenements, because shee is Tenant in Law, albeit that she be not Tenant in Deed.

Sect. 681.

CArt de franktenement en fait est celuy, q̃ sil soit disseisie de franktenement, il poit auer Assise. Mes tenant de franktenement en ley deuant son entre en fait, nauera my assise. Et si home soit seisie de certeine terre, et ad issue fits quel prent feme

FOr tenant of freehold in deed is he, who, if hee be disseised of the freehold, may haue an Assise, but tenant of freehold in Law before his entrie in deed, shall not haue an Assise. And if a man bee seised of certaine Land, and hath issue a sonne who taketh wife, and

feme, et le pier deuie seisie, et puis le fits devie deuant ascun entrie fait p luy en la terre, le feme le fits serra endowe en le tre, et uncore il ns'auoit nul franktenement ẽ fait mes il auoit un fee et franktenement ẽ ley. Et isſint nota, q̃ Præcipe quod reddat poit auxibien estre maintenus enuers celuy que ad franktenement en ley, sicome enuers celuy que ad le franktenement en fait.

the father dieth seised, & after the sonne dies before any entrie made by him into the land, the wife of the sonne shall be endowed in the land, and yet he had no freehold in Deed, but hee had a fee and freehold in Law. And so note, that a *Præcipe quod reddat* may as well bee maintained against him that hath the freehold in Law, as against him that hath the freehold in Deed.

18 H. 8. 3.

Vide Sect. 447.
Bracton. lib. 4. fol. 206, 237.
Britton. 83. b.
Fleta, lib. 3 cap. 15.

CHere fiue things are to be obserued; First that a remainder expectant vpon an estate for life worketh no Remitter, but when it fall in possession: for before his time he can haue no action, and no freehold is in him. Secondly, though the woman might waiue the remainder, yet because she is presently by the death of the husband Tenant to the Præcipe, it is within the rule of Remitter, and her power of waiuer is not materiall. Thirdly, that a freehold in Law being cast vpon the woman by act of Law without any thing done or assented to by her, doth remit her, albeit she be then sole and of full age. Fourthly, that a Præcipe lyeth against one that hath but a freehold in Law. Fifthly, that a woman shall be endowed where the husband hath the inheritance, and but a freehold in Law, as hath beene said in the Chapter of Dower.

Sect. 682.

ITem, si tenant en taile ad issue deux fits de pleine age, et il lessa la terre taile al eigne fits pur terme de sa vie, le remainder al fits puisne pur term̃ de sa vie, et puis le tenant en taile morust, en cest cas leigne fits nest pas en son Remitter, pur ceo que il prent estate de son pier. Mes si leigne fits morust sauns issue de son corps, donque ceo est un remitter al puisne frere, pur ceo que il est heire en le taile, et un franktenement en le ley est escheate, et iecte sur luy per force de le remainder, & il y ad nul enuers que il poit sue son action.

ALso if tenant in taile hath issue two sons of full age, and he letteth the lãd tailed to the eldest sõ for terme of his life, the remainder to the younger son for terme of his life, and after the Tenant in taile dieth, in this case the eldest sonne is not in his remitter, because hee tooke an estate of his Father. But if the eldest die without issue of his bodie, then this is a remitter to the younger brother, because he is heire in taile, & a freehold in Law is escheated and cast vpon him by force of the remainder, and there is none against whom he may sue his action.

(a) 12. E. 4. 20.
(b) Sect. 684, 685.

OF this opinion is (a) Littleton in our bookes, and of this sufficient hath beene said in the next Section before. See hereafter (b) some explanation hereof.

Sect.

Sect. 683.

¶ En meſme le maner eſt, lou home ſoit diſſeiſie, & le diſſeiſor mozuſt ſeiſie, et les teñts diſcendont a ſon heire, & lheire le diſſeiſor fait vn leas a vn home de meſmes les tenements pur terme de vie, le remainder a le Diſſeiſee pur terme de vie, ou en taile, ou en fee, le tenant a terme de vie mozuſt, ozе ceo eſt vn remitter al Diſſeiſee, &c. Cauſa qua ſupra, &c.

¶ IN the ſame manner it is, where a man is diſſeiſed, and the diſſeiſor dieth ſeiſed, and the tenements deſcend to his heire, and the heire of the diſſeiſor make a Leaſe to a man of the ſame tenements for terme of life, the remainder to the Diſſeiſee for terme of life, or in taile, or in fee, the Tenant for life dieth, now this is a remitter to the Diſſeiſee, &c. *Cauſa qua ſupra, &c.*

¶ AND this ſtandeth vpon the ſame reaſon that the caſes in the two Sections precedent doe. See the next Section following.

Sect. 684.

¶* NOta, ſi teñt en taile enfeoffa ſon fits et vn auter per ſon fait de la terre taile en fee, et liuery de ſeiſin eſt fait a lauter accozdant al fait, et le fits rien conuſant de ceo agreea a le feoffment, & puis celuy que pziſt le liuery de ſeiſin deuy, & le fits ne occupia la terre, ne pzent aſcun pzofit del terre durant la vie le pier, & puis le pier mozuſt, ozе ceo eſt vn remitter al fits, pur ceo que le franktenement eſt iect ſur luy per le ſuruiuoz: Et nul default fuit en luy, pur ceo que il ne vnque a-

NOte, if Tenant in taile infeoffe his, ſonne and another by his deed of the land intailed, in fee, & Liuery of ſeiſin is made to the other according to the Deed, and the ſon not knowing of this agreeth to the feoffement, and after hee which tooke the Liuery of ſeiſin dieth, and the ſon doth not occupie the land, nor taketh any profit of the land during the life of the father and after the father dieth, now this is a remitter to the ſonne, becauſe the freehold is caſt upon him by the ſuruiuor. And no default was in

¶* IT ſhould ſeeme by this marke that this was an addition to Littleton, but it is of Littletons owne worke, and agreeth with the originall, ſauing the originall begun this Section thus, Item ſi tenant en taile, &c.

¶ *Per ſon fait, &c.* Here Littleton materially addeth by his Deed, for if a man intendeth to (b) make a feoffement by parol to A. and B. and he and B. come vpon the land, A. being abſent, and make Liuery to B. in the name both of B. and A. and to their heires this ſhall enure onely to B. for neither can a man abſent take Liuery nor make Liuery without Deed.

(b) Temps H. 8. Feoffements. Br. 72. 40. E. 3. 41. 10. E. 4. 1. 2. 15. E. 4. 18. 18. E. 4. 12. 22. H. 6. 12.

¶ *Et liuerie de ſeiſin eſt fait a lauter accordant al fait, &c.* Note, Liuery being made to one accozding to the Deeds, enureth to both, becauſe the Deede whereunto the Liuery referreth is made to both, for the rule is, That Verba relata hoc maxime operantur per referentiam vt in eis inеſſe videntur.

¶ Et

¶ *Et le fits nient conuſant de cco, ne agree a le Feoffement.* Here it appeareth, That if the ſonne be Conuſant, and agreeth to the Feoffement, &c. this is no Remitter to him. And therefore if the Feoffement were made by Deed indented, and the ſonne with the other ſealeth the Counterpart, and then the Feoffor maketh liuery to the other according to the Deed, and the other dieth, the ſon is not remitted, becauſe he was Conuſant of the Feoffement, and agreed to the ſame, and Littleton ſaith in the Caſe that he putteth, That there was no default in the ſon, becauſe he agreed not to the Feoffement in the life of the Father: And ſo it ſeemeth, That if A. be ſeiſed in Taile and haue Iſſue two ſons, and by Deed indented betweene him of the one part, and the ſons of the other part, maketh a Leaſe to the eldeſt for life the remainder to the ſecond in Fee, and dieth, and the eldeſt ſon dieth without Iſſue, the ſecond ſon is not remitted, becauſe he agreed to the remainder in the life of the Father, or if the like Eſtate had beene made by Parol, if in the life of the Father the Tenant for life had beene impleaded, and made default, and he in the remainder had beene receiued, & thereby agreed to the remainder, after the death of the father and the eldeſt ſon without Iſſue, the ſecond ſon ſhould not be remitted, becauſe he agreed to the remainder in the life of the father, all which is well warranted by the reaſon yeelded by our Author in this Section.

greea, &c. en la vie ſon pier, et il ad nul enuers que il poit ſuer Briefe de Formedon, &c.

him, becauſe he did neuer agree, &c. in the life of his Father, and hee hath none againſt whom hee may ſue a Writ of *Formedon*, &c.

Vid. Sect. 682.

Sect. 685.

¶ Car ſi home ſoit diſſeiſie de certaine terre, et le Diſſeiſor fait vn Fait de Feoffment, per que il infeoffa B. C. et D. et le liuerie de ſeiſin eſt fait a B. et C. mes D. ne fuit al Liuerie de ſeiſin, ne vnq̃s agreea a le Feoffment, ne vnque voile prender les profits, &c. et puis B. et C. deuieront, et D. eux ſuruelquiſt, et le Diſſeiſee port ſon Briefe ſur diſſeiſin en le Per, enuers D. il monſtra tout le matter, coment il ne vnques agreea a le Feoffment, et iſſint il diſchargera luy de damages, iſſint que le Demandant ne recouera aſcuns dammages enuers luy, coment que il ſoit Tenant del franktenement del tre. Et vncore le ſtatute de Glouceſter cap. 1. voit, que le Diſſeiſee recouera damages en briefe de Entre, foundue ſur Diſſeiſin vers celuy que eſt troue tenant. Et ceo eſt vn proofe en lauter caſe, que entant que

FOr if a man be diſſeiſed of certaine land, and the Diſſeiſour make a Deed of Feoffemẽt, whereby hee infeoffeth B. C. and D. and Liuerie of ſeiſin is made to B. and C. but D. was not at the Liuerie of Seiſin, nor euer agreed to the feoffment, nor euer would take the profits, &c. and after B. and C. die, and D. ſuruiue them, and the Diſſeiſee bringeth his Writ vpon Diſſeiſin in the *Per* againſt D. hee ſhall ſhew all the matter, how he neuer agreed to the feoffement, and hee ſhall diſcharge himſelfe of Dammages, ſo as the Demaundant ſhall recouer no damages againſt him, although he be Tenant of the freehold of the Land. And yet the Statute of *Glouceſter, cap.* 1. will, That the Diſſeiſee ſhal recouer dammages in a Writ of Entrie founded upon a Diſſeiſin againſt him which is found Tenant. And this is a proofe in the other Caſe,

que lissue en le Taile auient a le franktenement & nemy per son fait, ne per son agreement, mes apres la mort son pier, ceo est vn Remitter a luy, entant que il ne poit suer Action de Formedon, en-uers nul auter person, &c.

that forasmuch as the Issue in taile came to the Freehold, and not by his Act, nor by his Agreement, but after the death of his Father, therefore this is a Remitter to him, in asmuch as he cannot sue an Action of *Formedon* against any other person, &c.

THis case standeth vpon the same reason that the next precedent case doth.

Mes celuy que est troue Tenant, &c. Herein appeareth, that Acts of Parliament are to be so construed, as no man that is innocent or free from iniurie or wrong, be by a literall construction punished or endamaged: and therefore in this case albeit the letter of the Statute is generally to giue dammages against him that is found Tenant, and the case that Littleton here putteth, D. being surueior, is consequently found tenant of the Land, yet because he waiued the Estate, and neuer agreed to the Feoffment, nor toke any profits, he shall not be charged with the dammages.

Sect. 686, 687.

ITem, si vn Abbe aliena la tre de son meason a vn auter en fee, et l'alienee p son fait charge la Terre oue vn rent charge en fee, et puis l'alienee in-feoffa l'Abbe oue licence, a auer et ten̄ al Abbe et a ses successors a touts iours, et puis l'Abbe mo-rust, et vn auter est eslieu, et fait Abbe: en cest case l'Abbe que est le successor, et son Couent, sont en lour Remitter, et tiendront la terre discharge, p̄ ceo que mesme l'Abbe ne poit auer ascun Action, ne Briefe Dentre sine assensu Capituli, de mesme la terre enuers nul auter person.

ALso if an Abbot alien the land of his house to another in Fee, and the Alienee by his Deed charge the land with a Rent charge in Fee, and after the alienee infeoffe the Abbot with Licence, To have and tō hold to the Abbot and to his Successors for e-uer, and after the Abbot die, and another is chosen, & made Abbot: in this case the Abbot that is the successor, & his Couēt, are in their Remitter, & shall hold the land discharged, because the same Abbot cañot haue an actiō nor a Writ of *Entre sine assēsu Capituli*, of the same Land against any other person.

Sect. 687.

EN mesme le maner est, lou vn Euesque, ou vn Deane, ou auters tiels Persons aliena, &c. sans assent, &c. et l'Alienee charge la terre, &c. et puis l'Euesque repryst estate de mesme la Terre per Licence, a luy et a ses Suc-

IN the same manner it is, where a Bishop or a Deane, or other such persons alien, &c. without assent, &c. and the Alienee charge the land, &c. and after the Bishop takes backe an estate of the same land by Licence, to him and his Succes-

Successors, & puis Leuesque deuie, son Successor est en son Remitter, come en droit de son Esglise, & defeatera le charge, &c. Causa qua supra, &c.

sours, and after the Bishop dieth, his Successor is in his remitter as in right of his Church, and shall defeat the Charge, &c. *Causa qua supra.*

OVr author having spoken of Remitters to singular or naturall persons, as Issues in Taile, and to Feme Couerts, and to their Heires, and to them in Reuersion or Remainder and their Heires: now he speaketh of Remitters to Bodies politike and incorporate, as to abbots, Bishops, Deanes, &c. And as Discents doe remit the berre which comes in the Per, so succession doth remit the Successor, albeit he commeth in the Post. And so in other cases where the Issue in Taile of full age shall be remitted, there in the like case shall the Successor be remitted also, and defeat all meane charges and incumbrances. Ia

TOue Licence, &c. That is, of the King and the Lords immediate and mediate, to dispense with the Statutes of Mortmaine, whereof see more before, Sect. 140.

Sect. 688.

ITem, si home suist faux action enuers le Tenant en Taile, sicome home voile suer enuers luy vn Brief Dentre en le Post, suppolant per ſ̄ briefe que le tenant en taile nad pas entre, sinon per A. de B. que dissei-sist layel le Demandant, & ceo est faux, & il recouer enuers le Tenant en le Taile per default, & suist execution. & puis l' Tenant en taile mourust, son Issue poit auer Briefe de Formedon enuers luy que recouera, & sil voile plea-der le recouerie enuers le Tenāt en taile, lissue poit dire, que le dit A. de B. ne disseisist poynt layel celuy que recouerast, en le maner come son Briefe suppola, & issint il faurera le recouerie. Auxy Po-sito, q̄ ceo fuit voyer, que le dit A. de B. disseisist layel le deman-dant que recouerast, & que apres le disseisin, le Demandant, ou son Pier, ou son ayel per vn fait a-uoyent relesse al tenant in Taile, tout le droit que il auoit en la Terre, &c. et ceo nient contriste-ant

ALso if a man sue a false Action against Tenant in Taile, as if one wil sue against him a Writ of Entrie in the *Post*, supposing by his Writ, That the Tenant in Taile had not his entrie, but by A. of B. who disseised the Grandfather of the Demandant, and this is false, and he recovereth against the Te-nant in Tayle by default, and sueth Execution, & after the Tenant in Taile dieth, his Issue may have a Writ of *Formedon* against him which recouereth, and if hee will plead the Recouerie against the Tenant in taile, the Issue may say, That the said A. of B. did not dis-seise the Grādfather of him which recouered in māner as his writ sup-pose, & so he shall falsifie his reco-uery. And admit this were true, That the said A. of B. did disseise the Grādfather of the Demandāt which recouered, & that after the disseisin, the Demandāt, or his Fa-ther, or his Grandfather by a deed had released to the Tenāt in Taile all the right which hee had in the

ant il ſuiſt vn Briefe Dentre en le Poſt enuers le Tenant in Taile, en le maner come eſt auauntdit, & le Tenant en Taile pleda a celuy, Que le dit A. de B. ne diſſeiſiſt pas ſon ayel, en le manner come ſon Briefe ſuppoſa, & ſur ceo ſont a Iſſue, & liſſue eſt troue pur le Demandant, per que il ad iudgement de recouer, & ſuiſt execution, & puis le Tenant en le Taile mozuſt, ſon Iſſue poit aũ vn Briefe de Formedon enuers celuy que recouera, & ſil voile plead le recouerie per laction trie enuers ſon pier, que fuit Tenant en Taile, donque il poit monſtrer & pleader le Releaſe fait al ſon pier, & iſſint laction que fuit ſue, feint en Ley.

land, &c. and notwithſtanding this hee ſueth a Writ of Entrie in the *Poſt*, againſt the Tenant in Taile, in manner as is a foreſaid, and the Tenant in Taile plead to him, That the ſaid A. of B. did not diſſeiſe his Grandfather, in ſuch manner as his Writ ſuppoſe, and upon this they are at Iſſue, and the Iſſue is found for the demãdant, wherby he hath iudgemẽt to recouer, & ſueth execution, & after the Tenant in Taile dieth, his iſſue may haue a Writ of *Formedon* againſt him that recouered, and if he wil plead the recouery by the Action tried againſt his father who was Tenant in taile, thẽ he may ſhew and plead the Releaſe made to his father, and ſo the Action which was ſued, feint in Law.

CIL *recouera enuers le tenant en taile per default.* Litt. addeth (by default) becauſe if the (c) recouery paſſed vpon an iſſue tried by verdict, he ſhall neuer falſifie in the point tried, becauſe an attaint might haue beene had againſt the Iurors, and albeit all the Iurors be dead, ſo as the attaint doe faile, yet the iſſue in taile ſhall not falſifie in the point tried, which, vntill it be lawfully auoided, pro veritate accipitur. As if the Tenant in taile be impleaded in a Formedon, and he trauerſeth the gift, and it is tried againſt him, and thereupon the Demandant recouer. In this caſe the iſſue in taile ſhall not falſifie in the point tried, but he may falſifie the recouery by any other matter: as that the Tenant in taile might haue pleaded a collaterall warrantie, or a Releaſe, as Littleton here putteth the caſe, or to confeſſe and auoid the point tried. And Littletons caſe holdeth not only in a recouery by default, whereof he ſpeaketh, but alſo vpon a nihil dicit, or Confeſſion or Demurrer.

(c) 12. E. 4. 19. 13. E. 4. 3. 11. H. 4. 89. 7. H. 4. 17. 14. H. 4, 7, 10, 11. 28. Aſſ. 32. 52, 34. Aſſ. 7. 10. H. 6. 5. 19. H. 6. 39. Brooke tit. Fauxifier de Recouerie. 55. 22. H. 6, 28, 34. H. 6. 2. 16. H. 6. 32, 36. H. 6. Fauxifier de Recouerie. 27

Sect. 689.

CET il ſemble que feint action eſt autant adire ẽ Engliſh a fained action, ceſtaſcauoir, tiel action, que coment que les parolx de le briefe ſont voyers, vncoze pur certaine cauſes il nad cauſe ne title per la ley de recouer pur meſme laction. Et faux action eſt, lou les parolx de briefe ſont faux. Et en les deux caſes auantdits, ſi le cas fuit tiel, que apres tiel recouery & execution ent

AND ſeemeth that a faint action is aſmuch to ſay in Engliſh, *a fained action*, that is to ſay ſuch an Action as albeit the words of the Writ be true, yet for certaine cauſes hee hath no cauſe nor title by the Law to recouer by the ſame action. And a falſe action is, where the words of the Writ bee falſe. And in theſe two Caſes aforeſaid, if the caſe were ſuch that after ſuch recouery, and execution

ent fait, le tenant en taile vst diſſeiſie celuy que recouera, & ent mozuſt ſeiſie, per que la terre diſcendiſt a ſon iſſue, ceo eſt vn remitter al iſſue, & liſſue eſt eins per force de le taile, & pur cel cauſe ieo aye mis les deux cales precedents, pur enformer toy, mon fits, que liſſue en taile per force dun diſcent fait a luy apres vn recouery & execution fait enuers ſon auncеſter poit eſtre aury bien en ſon remitter ſicome il ſerroit per le diſcent fait a luy apres vn diſcontinuance fait per ſon auncеſter de les terres tayles, per feoffement en pais, ou autrement, &c.

thereupon done the tenant in tayle had diſſeiſed him that recouered, and thereof died ſeiſed, whereby the Land deſcended to his iſſue, this is a Remitter to the iſſue, and the iſſue is in by force of the taile, and for this cauſe I haue put theſe two caſes præcedent, to enforme thee (my Sonne) that the iſſue in taile by force of a diſcent made vnto him after a recouery & Execution made againſt his Anceſtour, may be as well in his remitter, as he ſhould be by the diſcent made to him after a Diſcontinuance made by his Anceſtour of the entayled lands by feoffement in the Countrie or otherwiſe, &c.

CHere Littleton explaineth what a faint action is, and what a falſe action is, which is, plaine and perſpicious. And here it is to be obſerued, that a Remitter may be had after a recouery vpon a faint action by a diſſeiſin and a diſcent, aſwell as by a diſcent after a diſcontinuance by a feoffement, &c.

Sect. 690.

CHere it appeareth, that if a iudgement be giuen againſt a tenant in taile vpon a faint or falſe action, and Tenant in taile die before execution, no execution can be ſued againſt the iſſue in tayle. But if in a common recouerie iudgement bee had againſt Tenant in tayle where he voucheth, and hath iudgement to recouer ouer in value, albeit the Tenant in Tayle dyeth before execution, yet the recoueror ſhall execute the iudgement againſt the iſſue in tayle in reſpect of the intended recompence, and for that it is the common aſſurance of the Realme, and is well warranted (d) by our Bookes, and was not inuented by Iuſtice Choke, who was a graue and learned Iudge in the time of E. 4. (as ſome hold by tradition) but it may bee

38.Aſſ.32.34.Aſſ.Pl.7. 15.E.3.Age.95.11.H.4. 89.7.H.4.17.33.E.3. Entrie cong. 31.28. H 6. 13.10.H.6. 6.12. E.4.20. 14.H.7.11.23 Eliz.Dier. 276.lib.1.fol. 106. Shelleys caſe.Pl. Com.55.

See hereafter Sect. 709. 15.E.3.Briefe 324. 42.E. 3.53.44.E.3.21.48. E.3. 11.1.E.4.5. 5.E.4.2.

(d) 12. E.4. 20. Dier 21. Eliz.376.lib 10. fol. 37, 38. In Mary Portingtons Caſe.

CItem, ẽ les caſes auantdits, ſi le cas fuit tiel, que apres ceo que le demãdant auoit iudgement de recouer enuers l' tenant en taile, & meſme le tenant en taile mozuſt deuaunt aſcun execution eſt enuers luy p que les tenements diſcendõt a ſon iſſue, & celuy que recouera ſuiſt vn Scire facias, hors de le iudgement dauer execution de le iudgement enuers liſſue en taile, liſſue pledera le matter

ALſo in the caſes aforeſaid, if the caſe were ſuch, that after that the Demandant haue iudgement to recouer againſt the Tenant in tayle, and the ſame Tenant in tayle dieth before any execution had againſt him, whereby the Tenemẽts deſcend to his iſſue, & he who recouereth ſueth a *Scire facias* out of the iudgement to haue execution of the iudgemẽt againſt the iſſue in taile, the iſſue ſhal plead the matter as aforeſaid, and ſo

matter come auaunt est dit: Et issint prouua que l'dit recouery fuit faux, ou feint en ley, & issint luy barrera dauer execution de le iudgement.

proue that the said recouery was false or faint in Law, and so shall barre him to haue execution of the iudgement.

that it was vpon former Authorities and opinions of Iudges discouered by him, assented vnto by the rest of the iudges.

If a recouerie bee had against Tenant for life without consent or Coutne, though it be without title, and Execution behad, and Tenant for life dieth, the reuersion or remainder is discontinued, so as he in the reuersion or remainder cannot enter, but if such a recouery be had by agreement and Coutne betweene the Demandant and the Tenant for life, then, as hath beene said, it is a forfeiture of the estate for life, and he in the reuersion or remainder may enter for the forfeiture. Soit is if the Tenant for life suffer a common recouery at this day, it is a forfeiture of his estate, for a common recouery is a common conueyance or assurance, whereof the Law taketh knowledge. Since Littleton wrote there were two Statutes (e) made for preseruation of Remainders and Reuersions expectant vpon any manner of estate for life, the one in 32. H. 8. the other in 14. Eliz. but 32. H. 8. extended not to recoueries, when Tenant for life came in as Vouchee, &c. and therefore that act is repealed by 14. Eliz. and full remedie prouided for preseruation of the entrie of them in reuersion or remainder. But the Statute of 14. Eliz. extendeth not to any recouery, vnlesse it be by agreement or Coutne. Secondly, (f) if there be Tenant for life, Remainder in taile, the reuersion or remainder in fee, if Tenant for life be impleaded by agreement, and he vouche Tenant in taile, and he vouch ouer the common Vouchee, this shall barre the Reuersion or Remainder in fee, although he in the reuersion or remainder did neuer assent to the recouery, because it was not the intent of the act to extend to such a recouery, in which a Tenant in taile was vouched, for he hath power by common recouery, if he were in possession, to cut off all reuersions and remainders. And so if Tenant for life had surrendred to him in Remainder in taile, he might haue barred the remainders and reuersions expectant vpon his estate. Thirdly, where the prouiso of that act speaketh of an assent of Record by him in reuersion or remainder, it is to bee vnderstood, that such assent must appeare vpon the same Record either vpon a Voucher, Aid prier, receit, or the like, for it cannot appere of Record, vnlesse it be done in course of Law, and not by any extraiudiciall entrie, or by Memorandum.

5. Ass. 3, 5. E. 3. entre Cong. 42. li. 1 fol. 15, 16. Sir William Pelhams case.

(e) 32. H. 8. cap. 31. 14. Eliz cap. 8.

(f) Lib. 3. fol. 60, 61. Lincolne College case

Sect. 691.

ITem, si tenant en taile discontinua le taile, et morust, et son issue port son briefe d̄ Formedon enuers le discontinuee (esteant tenant de franktenement del terre) et le discontinuee pleda q̄ il nest tenant, mes oustermentdisclaima de le tenancy en la terre, en cest cas le iudgement serra, que le tenant alast sans iour, et apres tiel

ALso if Tenant in taile discontinue the taile, and dieth, and his issue bringeth his writ of *Formedon* against the discōtinuee (being tenant of the freehold of the Land) and the Discontinuee plead that he is not tenant, but vtterly disclaimeth from the tenancy in the lād. In this case the iudgement shall be that the Tenant goeth without day, & after such

CHerein appeareth that vpon the plea of non-tenure, or of a disclaimer of the tenant in a Formedon in the Discender, albeit the expresse iudgement be that the tenant shall goe without day, yet in iudgement of Law the Demandant may enter according to the title of his Writ, and bee seised in tayle notwithstanding the Discontenuance. And here Littleton saith the Demandant shall be adiudged in his Remitter, where hee taketh Remitter in a large sense, for in this case the Demandant hath not two rights, but hath onely one antient right, and is restored to the same by course of Law, and so Remitter here is taken for a recontinuance of the right.

5 E. 4. 1. 36. H. 6. 29. 6. E. 3. 8. 4. E. 1. 38.

Non-tenure. Vide Bracton. lib. 5. fol. 431, 432. & 414. Britton. cap. 84.

¶ *Ou le demandant ne recouera damages.* Here is to bee obſerued that in ſuch a Præcipe where the Demandant, is to recouer, dammages, if the Tenant pleade non-tenure or diſclaime, (f) there the Demandant may auerre him to be tenant of the land, as his Writ ſuppoſe for the benefit of his damages, which otherwiſe hée ſhould loſe, or pray iudgement and enter (g) But where no damages are to bee recouered, as in a Formedon in the Diſcender, and the like, there hee cannot auerre him Tenant, but pray his Iudgement and enter, for thereby hee hath the effect of his ſuite Et fruſtrà fit per plura, quod fieri poteſt per pauciora.

(f) 13.H.7.28.36.H.6. 29.22.H.6.44.4.E.4.38. 5.E.4.1.6.E.3.8.

(g) 8.E.3.134. 24.E.3.9. 11.H.4.16. & 7.H.6.17.

5.E.4.1.

¶ *Auerrer.* To auerre or auouch, or verifie, verificare, whereof commeth verificatio an auerment, and is ſo ſaid as well in Engliſh as in French. And is two-fold, viz. generall and particular, A generall auerment, which is the concluſion of euery plea to the Writ, or in barre of replications and other pleadings (for Counts or Auowries in nature of Counts need not bée auerred) containing matter affirmatiue, ought to bée auerred, & hoc paratus eſt verificare, &c. Particular auerments are, as when the life of Tenant for life, or Tenant in taile are auerred, and there, though this word (verificare) be not vſed, but the matter auouched and affirmed, it is vpon the matter an auerment. And an auerment containeth aſwell the matter as the forme thereof.

¶ *Que le tenant alaſt ſans iour.* Quod tenens eat ſine die. This is the entrie of the iudgement in that caſe, that the Tenant ſhall goe without day, that is to be diſcharged of further attendance, and this is ſome-

iudgement liſſue en le taile que eſt demandant poit entrer en la terre, nyent contriſteant le diſcontinuance, & per tiel entrie il ſerra adiudge eins en ſon Remitter. Et la cauſe eſt, pur ceo q̃ ſi aſcun home ſuiſt Præcipe quod reddat, enuers aſcun tenant de franktenement, en quel action l' demandant ne recouera damages, & le tenant pledaſt nontenure, ou auterment diſclaima en le tenancie, le demandant ne poit auerrer ſon briefe & dirra q̃ il eſt tenant come le briefe ſuppoſe. Et pur cel cauſe l' demandant apres ceo que iudgement eſt done q̃ le tenant alaſt ſans iour, poit entrer ẽ les tenements demands, le quel ſerra auxy graund aduantage a luy en ley, ſicome il auoit iudgement de recouerer enuers le tenant, & per tiel entrie il eſt en ſon remitter per force del taile. Mes iou le demand recouera dammages enuers le tenant, la le demandant poit auerer, que il eſt tenant come le briefe ſupp̃, & ceo pur laduantage del

iudgement the iſſue in the taile that is demandant may enter into the land, notwithſtanding the diſcontinuance, & by ſuch entrie hee ſhall be adiudged in his Remitter. And the reaſon is, for that if any man ſue a *Præcipe quod reddat* againſt any tenant of the freehold in which action the demandant ſhall not recouer damages, and the tenant pleads nontenure, or otherwiſe diſclaime in the tenancie, the Demandane cañot auerre his writ, and ſay that hee is tenant as the Writ ſuppoſeth. And for this cauſe the demãdãt after that that iudgemẽt is giuẽ that the tenant ſhall goe without day, may enter into the tenements demanded, the which ſhall bee as great an aduantage to him in law, as if he had iudgement to recouer againſt the tenant, and by ſuch entry hee is in his remitter by force of the entaile. But where the demandant ſhall recouer damages againſt the tenãt, there the demandant may auerre that he is tenant, as the Writ ſuppoſeth and that for the aduã-

del demandant p̄ recouer les damages, ou autrement il ne recoueroit ses damages, queux sont ou fueront a luy dones per la Ley.

tage of the demandāt to recouer his dammages, or otherwise hee shall not recouer his dammages, which are or were giuen to him by the Law.

time finall for that action whereof Littleton here putteth an example, and sometime tempozarie, whereof Littleton also hath put an example, as when excommengement is pleaded in disabilitie of the Plaintiffe oz Demandant, there the award is, that the Tenant oz Defendant shall goe without day, and yet Vide Sect. 101.

when the Demandant oz Plaintiffe haue purchased his Letters of absolution, vpon shewing them to the Court, he may haue a resommons oz reattachment to recontinue the cause againe. But it is to be knowne, that when iudgement is giuen for the Tenant oz Defendant vpon a Plea in barre, oz to the Writ, &c. the iudgement is all one, viz. Quod tenens, oz defendens eat inde sine die, and shall haue reference to the nature and matter of the Plea, and so be taken either to goe in barre, oz to the Writ. So when iudgement is giuen against the Plaintiffe, either in barre of his Action, oz in abatement of his Writ, &c. the iudgement is all one, viz. Nihil capiat per breve, and it appeareth by the Recozd, whether the Plea did goe in barre, oz to the writ. And the cause of the iudgement is neuer entred in the Recozd in any case, for that vpon consideration had of the Recozd it appeareth therein. 3.H.4.2.11.

Sect. 692.

ITem, si home soit disseisie, & le disseisoz deuy, son Heire esteant eins per discent, oze lentrie de le Disseisee est tolle, & si le Disseisee porta son briefe dentrie sur disseisin en le Per, enuers lheire, & lheire disclaime en le tenancy, &c. le Demandant poit auerrer son briefe que il est Tenant come le Briefe suppose sil voit, pur recouerer ses damages, mes vncoze sil voit relinquisher le auerment, &c. il poit loyalment entrer en la terre per cause del disclaimer, nient obstant que son entrie adeuant fuit tolle, & ceo fuit adiudge deuant mon master sir R. Danby iades Chiefe Justice de la Common Banke & ses compagnions, &c.

ALso if a man be disseised, and the Disseisor die his Heire being in by discent, now the entrie of the Disseisee is taken away, and if the Disseisee bring his Writ of entrie *Sur disseisin* in the *Per* against the Heire, and the Heire disclaime in the tenancie, &c. the Demandant may auerre his Writ that hee is Tenant as the Writ suppose, if he will, to recouer his dammages, but yet if hee will relinquish the auerment, &c. he may lawfully enter into the Land because of the Disclaimer, notwithstanding that his Entrie before was taken away, and this was adiudged before my Master Sir *R. Danby* late chiefe Iustice of the Common Place and his Companions, &c.

ITem si home soit disseisie, &c. Albeit in this case, and in the case before the Entrie of the Demandant is his owne act, and the Demandant hath no expresse iudgement to recouer, yet shall he be remitted, because he in iudgement of the Law shall be in according to the title of his Writ, and by his Entrie defeat the Discontinuance, and consequently is remitted to his ancient estate. 36. H. 6. fol. 29.

ISir Robert Danby Knight, was a Gentleman of an ancient and faire descended family, and Chiefe Iustice of the Court of Common Pleas, a graue, reuerend & learned Iudge, 5.E.4.4. 4.E.4. 31.

of whom our Author speaketh here with verie great reuerence, as you may perceiue. And here is to be noted how necessarie it is, after the example of our Author, to obserue the iudgements and resolutions of the Sages of the Law.

Sect. 693.

29.Ass.p.26.43. Ass.p.3. 11.H.7.20 3.H.6.19. 40.E.3.43.

THere appeareth a diuersitie betweene a right of Entrie, and a right of Action; for if a man of full age hauing but a right of Action, taketh an Estate to him, hee is not remitted: but where hee hath a right of Entrie, and taketh an Estate, he by his entrie is remitted, because his Entrie is lawfull, and if the Disseisor infeoffe the Disseisée and others, the Disseisee is remitted to the whole for his Entrie is lawfull: other wise it is if his Entrie were taken away.

8.R.2.Quar. im.199. 19.H.6.30.8.H.6.17. 21.H.6.2.3.H.4.8. 14 H.6,15.16.37.H.6.18. 26.H.8.4. F.N.B.36.fol. & 35.b.

¶ *Lon l' entrie est congeable.* A is disseised of a Mannor, whereunto an Aduowson, is appendant, an Estranger vsurpe to the Aduowson if the Disseisée enter into the Mannor, the Aduowson is recontinued againe, which was seuered by the vsurpation. And so it is if Tenant in Tayle be of a Mannor, whereunto an Aduowson is appendant, the Tenant in Taile discontinueth in Fee, the Discontinuee granteth away the Aduowson in Fée, and dieth, the Issue in Tayle recontinueth the Mannor by recouerie, he is thereby remitted to the Aduowson, and in both cases hee that right hath shall present when the Church becommeth voyd.

22.Ass.p.33. en le case de Theobald Grimule.

The Patron of a Benefice is outlawed, and the Church becommeth voyd, an Estranger vsurpeth, and six moneths passe, the King doth recouer in a Quare impedit, and remoue the Incumbent, &c. the Aduowson is recontinued to the rightfull Patron. And so note a diuersitie betweene a Recontinuance and a Remitter, for a Remitter cannot be properly, vnlesse there be two titles, but a recontinuance may be where there is but one.

¶ Item, lou lentry dun home est congeable, coment que il prent estate a luy quant il est de pleine age pur terme de vie, ou en taile, ou en fee, ceo est vn Remitter a luy, si tiel prisel de estate ne soit per fait indent, ou per matter de record, que concludera ou estoppera. Car si hõe soit disseisie, & reprẽt estate de le Disseisor sans fait, ou per fait polle, ceo est vn remit al Disseisee, &c.

ALso where the Entrie of a man is congeable, although that he takes an estate to him when hee is of full age, for terme of life, or in Taile, or in Fee, this is a Remitter to him, if such taking of the Estate be not by Deed indented, or by matter of Record, which shall conclude or estop him: for if a man be disseised, and takes backe an Estate frõ the Disseisor without Deed, or by deed poll, this is a Remitter to the Disseisee, &c.

13.H.4.5. 3.H.4.17. 8.H.4.8. 12.H.4.19. 35.Ass.8.17. Ass.3. 29.Ass.53.43.E.3.17. Parkers case.44.E.3. Estop. 0 21. H.6.2.per Paston.8.H.6.17. per Cotismere.

vncor 238:b, & Lit §:375 & 377: semble de maintainer que ambideux gits point plaider en fait poll.

¶ *Per fait indent, &c.* Here it appeareth, That if the Disseisor by Deed indented make a Lease for life, or a gift in Taile, or a Feoffment in fée, whereunto Liuerie of Seisin is requisitie, yet the Deed indented shall not suffer the Liuerie made according to the forme and effect of the Indenture, to worke any Remitter to the Disseisée, but shall estop the Disseisee to claime his former estate: and if the Disseisor vpon the Feoffment doth reserue any rent or condition, &c. the rent or condition is good: and the reason wherefore a Deed indented shall conclude the taker more than the Deed poll is, for that the Deed poll is only the Deed of the Feoffor, Donor, and Lessor, but the Deed indented is the Deed of both Parties, and therefore as well the taker as the giuer is concluded.

¶ *Ou per Record.* As by Fine, Deed indented, and inrolleth, and the like.

Sect.

Sect. 694.

CItem, ſi home leſſa terre pur terme de vie a vn autr, le quel aliena a vn auter en fee, & lalienee fait eſtate a le Leſſor, ceo eſt vn Remitter al Leſſor, pur ceo que ſon Entrie fuit congeable, &c.

ALſo if a man let land for terme of life to another, who alieneth to another in Fee, and the Alienee make an Eſtate to the Leſſor, this is a Remitter to the Leſſor, becauſe his Entrie was congeable.

This is euident enough vpon that which hath béne ſaid.

Sect. 695.

CItem, ſi hom̃ ſoit diſſeiſie, & le Diſſeiſor leſſa la terre al diſſeiſee per fait pol, ou ſans fait pur terme des ans, per q̃ le diſſeiſee entra, ceſt entre eſt vn Remitter a le diſſeiſee. Car en tiel caſe lou lentre dun home eſt congeable & vn Leaſe eſt fait a luy, coment que il claima p̃ parole en pais, que il ad eſtate per force de tiel leaſe, ou dit ouertment que il ne claima riens en la terre ſi non p̃ force de tiel Leaſe, vncore ceo eſt vn remitter a luy, car tiel diſclaimer en le pays neſt riens a purpoſe. Mes ſil declaimer en court de Record que il nad eſtate forſque per force de tiel Leaſe, & nemy auterment, donqs ſi ẽ conclude, &c.

ALſo if a man be diſſeiſed, and the Diſſeiſor let the Land to the Diſſeiſee by deed pol, or without deed, for terme of yeares, by which the Diſſeiſee entreth, this entrie is a remitter to the diſſeiſee. For in ſuch caſe where the entrie of a man is congeable, and a Leaſe is made to him, albeit that he claimeth by words in *Paiis*, that he hath eſtate by force of ſuch Leaſe, or ſaith openly, That he claimeth nothing in the Land but by force of ſuch leaſe, yet this is a Remitter to him, for that ſuch diſclaim̃r in *Paiis* is nothing to the purpoſe. But if hee diſclaime in Court of Record, that he hath no eſtate but by force of ſuch Leaſe, and not otherwiſe, then is he concluded, &c.

CHere appareth a Diuerſitie betwéne a Claim in Paiis of an Eſtate, and a Claime of record, for a Claime in Paiis ſhall not hinder a Remitter. Otherwiſe it is of a Claime of Record, becauſe that doth worke a Concluſion.

Sect. 696.

CItem, ſi deux Joyntenaunts ſeiſie de certeine tenements en Fee, lun

ALſo if two Ioyntenants ſeiſed of certaine Tenements in Fee, the one being of

CHere note a Diuerſitie worthy the obſeruation, that where Joyntenants or Coparceners haue one and the ſame remedie, if the one enter, the

10.H.6.10. 19.H.6.45. 31.H.6.tit.Ent.cong.54.

the other shall enter also: but where remedies bee seuerall, there it is otherwise. As if two Ioyntenants or Coparceners ioyne in a reall action, where their entrie is not lawfull, and the one is summoned and seuered & the other pursueth and recouereth the moitie, the other Ioyntenant or Coparcener shall enter and take the profits with her, because their remedie was one & the same. But where two Coparceners be, and they are disseised, & a Discent is cast, and they haue issue and die, if the Issue of the one recouer her moitie, the other shall not enter with her, because their remedies were seuerall, & yet when both haue recouered, they are Coparceners againe. So here in this Case that Littleton putteth, the two Ioyntenants haue not equall remedie, for the Infant hath a right of Entrie, & the other a right of action, and therefore the Infant being remitted to a moitie, the other shall not enter and take the profits with her.

If A. and B. Ioyntenants in Fee, be disseised by the father of A. who dieth seised his sonne and heire entreth, he is remitted to the whole, & his Cõpanion shall take aduantage thereof. Otherwise here in the Case of Littleton, for that the aduantage is giuen to the Infant, more in respect of his person, than of his right, wherof his Companion shall take no aduantage. But if the Grandfather had disseised the Ioyntenants, and the Land had discended to the Father, and from him to A. and then A. had died the Entrie of the other should be taken away by the first Discent, and therefore he should not enter with the Heire of A.

esteant de pleine age, lauter deins age sont disseisies, &c. & le disseisor morust seisie, & son issue entra lun de les Ioyntenants esteant adonqs deins age, & apres que il vient al pleine age, lheire le disseisor lessa les Tenements a meismes les Ioyntenants pur terme de lour deux vies, ceo est vn remitter (quant al moitie) a celuy que fuit deins age, pur ceo que il est seisie de cest moitie que affiert a luy en Fee, pur ceo que son entre fuit congeable. Mes lauter Ioyntenant nad en lauter moitie forsque estate pur terme de sa vie, per force de le lease pur ceo que s̃ entre fuit tolle, &c.

full age, the other within age, bee disseised, &c. and the Disseisor die seised, and his Issue enter, the one of the Ioyntenants being then within age, & after that he commeth to full age, the Heire of the Disseisor letteth the Tenements to the same Iointenants for terme of their two lives, this is a Remitter (as to the moitie) to him that was within age, because hee is seised of the moitie which belongeth to him in Fee, for that his entrie was congeable. But the other Ioyntenant hath in the other moity but an estate for terme of his life by force of the lease, because his entry was taken away, &c.

Vide 35. Ass. Pl. Vltim.

But here in the case of Littleton, if after the Discent the other Ioyntenant had died, and the Infant suruiued, some say that he should haue entred into the whole, because he is now in iudgement of Law, solely in by the first Feoffment, and he claimeth not vnder the Discent

CHAP. 13. Of VVarrantie. Sect. 697.

Vide Sect. 211, 331.

CIL est communement dit. Here by the opinion of Littleton, Cõmunis opinio is of authoritie, & stands with the rule of Law, A communi obseruantia non est rece-

CIL est cõmunement dit, Que trois Garranties y sont, s̃, Garrantie lineal, Garrantie

IT is cõmonly said that there be three Warranties, *scilicet*, Warrantie Lineall, Warrantie Co-

rantie collateral, & garrantie q̃ cõmence p̃ disseisin. Et est asauoir, que deuant lestatute de Glouc̃, touts garranties q̃ur discendont a eur queur sont heires a eur q̃ sesoyẽt les garranties, sueront barrez a meſmes les heires a demander ascuns terrez ou tenemẽts encounter les garranties, sozepzise l'z garrãtiez q̃ commencerẽt p̃ disseisin, car tiel garrantie ne fuit vnqz barre al heire, pur ceo q̃ le garrantie commence per tozt, s. per disseisin.

laterall, and Warrantie that commence by disseisin: And it is to bee vnderstood, that before the Statute of Glouc' all Warranties which descended to them which are heires to those who made the Warranties, were barres to the same heires to demand any Lands or Tenements against the Warranties, except the Warranties, which commẽce by disseisin. For such warrãtie was no barre to the heire, for that the Warrantie cõmenced by wrong, *viz.* by disseisin.

dendum: and againe, Minimè mutanda sunt quæ certam habuerunt interpretationem.

Here our authour beginneth this Chapter with an exact diuision of Warranties. ¶ Warrantie is a Couenãt reall annexed to Lands oz Tenements whereby a man and his heires are bound to Warrant the same, and either vpon vouchet, oz by iudgement in a Writ of Warrantia cartæ to yeeld other lands and tenements (which in old Bookes is called in Excambio) to the value of those that shall bee euicted by a sozmer Title, oz else may bee vsed by way of Rebutter.

Bract. lib. 2. fol. 37. lib. 5. fol. 380. 381. & c. Glanuill. lib. 3 c. 1, 2, 3. lib. 7. c. 2, 3. lib. 9. c. 4. Britton cap. 105 fol. 249, 250. &c. & fol. 88 106. b. 196, 197. Fleta lib. 5. cap. 15 Lib. 6. c. 23. Mirr. cap. 2. §. 17.

38 E. 3. 21. 43. E. 3. 18.

¶ *Rebouter* is a French wozd, and is in Latin repellere, to repell oz barre, that is in the understanding of the Common Law, the action of the heire by the warrantie of his anceſtoz, and this is called to Rebut oz repell. (c) Britton saith, Garranter en vn sence signifie a defender son Tenant en sa seisin, & en auter sence signifie que si il ne defende que le garrant luy soit tenue a eschanges, & de faire son gree a la vaillaunce. (d) Bracton saith, Warrantizare nihil aliud est, quam defendere & acquietare tenentem qui Warrantum vocauit in seisina sua. (e) Fleta saith, Warrantizare nihil aliud est quam possidentem vocantem defendere & acquietare in sua seisina vel possessione erga petentem, &c. & tenens de re Warranti excambium habebit ad Valentiam.

(c) Britton. fol. 197. b.

(d) Bract. lib. 5 fol. 380.

(e) Fleta lib. 5. cap 15.

It is to be obserued that there be two kinde of Warranties, that is to say, Warrantia expressa, & tacita, vulgarly said warrantie in deed, because they be expressed, and warranties in Law, because the Law doth tacitely imply them. And this diuision of Warranties that Littleton here speaketh of, he intendeth of warranties in deed. And of Warranties in Law moze shall be said hereafter in this Chapter. As foz promises oz Contracts annexed to Chatels reall oz personall, they are not intended by our authoz in his said diuision, but onely Warranties concerning Freeholds and Inheritances.

Lib. 4. fol. 81. Nokes case. Vide Sect. 733.

¶ *Denant le statute de Glouc.* This Statute was made at a Parliament holden at Gloceſter in the sixt yeare of the reigne of King E. 1. and therefoze it is called the Statute of Gloceſter.

Glouc. cap. 3. Vid. Sect. 720, 725. & 727 &c.

¶ *Sont barres a meſmes les heires a demander aſcuns terres, &c.* Foz the Statute, as hath beene said, being made in 6. E. 1. (was before the Statute of Donis conditionalibus which was enacted 13. Edward 1.) when all states of Inheritance were fee simple. But after the statute of 13. Edward. 1. the heire in tayle is not barred by the warrantie of his anceſtour vnleſſe there be aſſets, as shall be said hereafter moze largely in this Chapter.

Bract. lib. 4. fol. 321. b. Fleta lib. 5. c. 14. 7. E. 3. Garr. 47.

By the statute of Gloceſter foure things are enacted. 6 E. 1. c. 3

First, that if a Tenant by the courteſie alien with warrantie and dieth, that this shall bee no barre to the heire in a writ of Mordanceſter without aſſets in fee simple. And if Lands oz Tenements descend to the heire from the father, he shall be barred hauing regard to the value thereof.

He=

Secondly, That if the heire, for want of assets at that time descended, doth recouer the lands of his Mother by force of this act, and afterwards assets descend to the heire from the father, then the Tenant shall recouer against the heire the Inheritance of the mother by a writ of Judgement, which shall issue out of the Record, to resummon him that ought to warrant, as it hath beene done in other Cases, where the heire being vouched commeth into the Court, and pleadeth that he hath nothing by discent.

Thirdly, That the issue of the sonne shall recouer by a writ of Cosinage, Aiel and Besaiel.

And lastly, that the heire of the wife after the death of the Father and Mother shall bee barred of his action to demand the Heritage of the Mother by Writ of Entrie, which his father aliened in the time of his Mother, whereof no fine was leuied in the Kings Court.

Concerning the first, there be two points in Law to be obserued.

First, Albeit the statute in this article name a Writ of Mordancester, and after Writs of Cosinage, Aiell and Besaiell (e) yet a Writ of Right, a Formedon, a Writ of Entry Ad Communem Legem, and all other like actions are within the puruiew of this Statute, for those actions are put but for examples.

(e) 11 E. 2. tit. Garr. 83. 4. E. 3. Garr. 63. 18. E. 3. 51. Pl Com. 110. 7. E. 3. 53. Temps E. 1. Garr. 87.

Secondly, Where it is said in the said act, (if the Tenant by the courtesie alien) yet his release with warrantie to a Disseisor, &c. is within the puruiew of the Statute, for that it is in equall mischiefe, and if that euasion might take place, the Statute should haue beene made in vaine.

27. E. 3. 89. 14. E. 4. Gar. 5. Dier. 4. Mar. 148. a.

If Tenant by the courtesie be of a Seigniorie, and the Tenancie escheate vnto him, and after he alieneth with Warrantie, this shall not binde the issue, unlesse assets descend, for it is in equall mischiefe. But notwithstanding this Statute, if Feme tenant in Dower had aliened in fee with Warranty & died, the Warranty had bound the heire vntill the Statute (o) of 11. H. 7. since our author wrote. By which Statute the heire may enter notwithstanding such Warrantie.

22. Ass. 9. & 37. Temps E. 1. Gar. 86.

(o) 11. H. 7. cap. 20.

But note there is a diuersitie betweene a Warranty on the part of the mother, and an estoppell. For an estoppell of the part of the Mother shall not binde the heire, when hee claimeth from the Father. As if Lands bee giuen to the Husband and Wife; and to the heires of the Husband, the Husband make a gift in taile, and dieth, the wife recouereth in a Cui in vita against the Donee, supposing that she had fee simple, and make a feoffement and dyeth, the Donee dyeth without issue, the issue of the Husband and Wife bring a Formedon in the Reuerter against the Feoffee, and notwithstanding that he was heire to the estoppell, and the Mother was Estopped, yet for that he claimed the Land as heire to his Father, hee was not Estopped. Note that Warranties are fauoured in Law, being part of a mans assurance, but estoppels are odious.

18. E. 3. 9.

If a Feme heire of a Disseisor infeoffeth me with Warrantie, and marrieth with the Disseisee, if after the Disseisee bring a Præcipe against me, I shall rebut him, in respect of the Warrantie of his wife, and yet he demandeth the Land in another right. And so if the Husband and wife demand the right of the wife, a Warrantie of the collaterall ancestour of the Husband shall barre.

21. R. 2. Iudgement. 263.

If a woman had beene Tenant for life, the remainder or reuersion to her next heire, and the woman had aliened in fee and died, this warrantie had barred her heire in remainder or Reuersion, but this is partly holpen by the said act of 11. H. 7. viz. where the woman hath any estate for life of the Inheritance or Purchase of her Husband, or giuen to her by any of the ancestours of the husband, or by any other person seised to the vse of her husband or of any of his ancestours, there her alienation, Release or Confirmation with Warrantie shall not binde the heire.

11. H. 7. cap. 20. Vide Sect. 595. See this Statute of 11. H. 7. ca. 20. well expounded. Lib. 1. fol. 176. in Sir Anthon. Mildmaves Case 3. & 4. Ph. & M. Dier. 146. Lib. 3. fol. 59, 60, 61, 62. Lincolne Coll. Case. Pl. Com. fol. 56. 20. Eliz. Dier. 362. Doct. & Stud. 55. 8. El. Dier. 248. 19. El. Dier. 354. 21. El. ibid. 362. lib. 3. f. 50, 51. Sir George Brownes case, Lib. 5. f. 79 Fitzh. Case. 27. H. 8. 23.

To the authorities quoted in margent which may serue as Commentaries vpon the said Statute, I will onely adde two cases, the one was: (f) A man seised of Lands in fee leuied a fine to the vse of himselfe for life, and after to the vse of his wife, and of the heires males of her body by him begotten for her Joynture, and had issue male, and after hee and his wife leuied a fine, and suffered a common recouery, the Husband and wife died, and the Issue male entred by force of the said statute of 11. H. 7. And it was holden by the Justices of Assise (the case comming downe to be tried by Nisi prius) that the entry of the Issue male was lawfull, and yet this case is out of the Letter of the statute, for shee neither leuied the fine, &c. being sole, or with any other after-taken husband, but is by her selfe with her husband, that made the Joynture. Sed qui hæret in littera hæret in cortice, and this case being in the same mischiefe is therefore within the remedy of the statute by the intendment of the makers of the same to auoid the diuertion of heires who were prouided for by the said Joynture, and especially by the husband himself that made the Joynture, which (as it was said) is a stronger case than the example set downe in the statute. The other was, (g) A man is seised of

(f) Mich. 13. Iac. inter Harley & West in ejectione firme in Communi Banco. Lincol.

(g) Pasch. 17. Eliz. in

Lands

Lands in the right of his Wife, and they two leuie a fine, and the Conusee grant and rendereth the Land to the Husband and Wife in speciall tayle, the remainder to the right heires of the wife, they haue issue, the Husband dyeth, the wife taketh another Husband, and they two leuie a fine in fee, and the issue entereth, this is directly within the Letter of the Statute, and yet it is out of the meaning, because the estate of the Land moued from the wife, so as it was the purchase of the Husband in Letter, and not in meaning. But where the woman is Tenant for life, by the gift or conueyance of any other, her alienation with warrantie shall binde the heire at this day. So if a man bee Tenant for life (otherwise than as Tenant by the courtesie) and alien in fee with Warrantie, and dieth, this shall at this day binde the heire, that hath the Reuersion or Remainder by the Common Law not holpen by any Statute. But all this is to be vnderstood, vnlesse the heire that hath the Reuersion or Remainder doth auoid the estate so alienen in the life of the ancestour, for then the estate being auoided, the Warrantie being annexed vnto the estate, is auoided also, whereof more shall bee said in this Chapter in his proper place. And therefore it is necessary for the heire in such cases to make an entry as soone as hee hath notice or probable suspition of such an alienation.

Com. Banco Latrons. Case, which I my selfe heard and obserued.

Sect. 715.

As to the second clause of the Statute of Gloceſter. There are two points of Law to bee obserued.

First, That by the expresse purview of the Statute, if assets doe after discend from the Father, then the Tenant shall haue recouery or restitution of the Lands of the Mother. But in a Formedon if at the time of the Warrantie pleaded no assets bee discended whereby the Demandant recouereth, if after assets discend, there the Tenant shall haue a Scire facias for the assets, and not for the Land intailed. And the reason hereof is, that if in this case the Tenant should bee restored to the Land intailed, then if the Issue in Taile alienedthe assets, his Issue should recouer in a Formedon, and therefore the Sages of the Law, to preuent future occasions of suits, resolued the said diuersitie in the Cases abouesaid, upon consideration and construction of the Statute of Gloceſter, and of the Statute de Donis Conditionalibus.

Pl. Com. Fulmerstones case, 110. a. Lib. 8. fol. 53. Syms Case.

Secondly, It is to bee obserued, that after assets discended, the recouerie shall bee by Writ of iudgement, which shall issue out of the Rolle of the Iustices, &c. And here two things are to bee declared and explained. First, by what writ, &c. and that is cleere, viz. by Scire facias. But the second is more difficult, and that is upon what manner of iudgement the Scire facias is to bee grounded: for explanation whereof it is to bee vnderstood, that if the Tenant will haue benefit of the Statute, hee must plead the Warrantie, and acknowledge the title of the Demandant, and pray that the aduantage of the Statute may bee saued vnto him. And then if after assets discend, the Tenant upon this Record shall haue a Scire facias. And if assets discend but for part, hee shall haue a Scire facias for so much. But if the Tenant plead the Warrantie, and plead further that assets discended, &c. and the Demandant taketh issue that assets discended not, &c. which issue is found for the Demandant, whereupon he recouereth, the Tenant, albeit assets doe after discend, shall neuer haue a Scire facias vpon the said Iudgement, for that by his false plea he hath lost the benefit of the said Statute.

Lib. 8. fol. 53. 54. Syms case. Ibid. 134. Mary Shipleys Case.

Touching the third, sufficient hath beene spoken before. For the last, it is to be obserued, That if the Husband be seised of lands in the right of his Wife, and maketh a feoffement in fee with Warrantie, the Wife dieth, and the Husband dieth, this Warrantie shall not binde the heire of the Wife without assets, albeit the Husband be not Tenant by the curtesie. But of this you shall reade more hereafter.

8. E. 2. tit. Gar. 81. 18. E. 3. 51.

In the meane time know this, that the learning of Warranties is one of the most curious and cunning Learnings of the Law, and of great vse and consequence.

Vide Sect. 725.

¶ *A demander aſcuns terres ou tenements.* A Warrantie may not only be annexed to Freeholds, or Inheritances corporeall, which passe by Liuery, as Houses and Lands, but also to Freeholds or Inheritances incorporeall, which lye in grant as aduowsons, and to Rents, Commons, Eſtouers, and the like, which issue out of Lands or Tenements. And not onely to Inheritances in esse, but also to Rents, Commons, Estouers, &c. newly created. As a man (some say) may grant a Rent, &c. out of Land for life, in tayle, or in fee with Warrantie, for although there can be no title precedent to the Rent, yet there may be a title precedent to the Land, out of which it issueth before the grant of the Rent, which Rent may bee auoided by the recouery of the Land, in which case the Grantee may helpe himselfe by a Warrantia cartæ, vpon the especiall matter. And so a Warrantie in Law may extend to a Rent, &c. newly created, and therefore if a Rent newly created be granted in Exchange for an acre of Land, this Exchange is good, and euery Exchange implyeth a Warrantie in Law. And so a Rent newly created may be granted for oweltie of partition.

2. H. 4. 13. 30. H. 8. Dier. 42. Temps E. 1. admesurement 16. 32. E. 1. Voucher. 294. 30. E. 1. Exchange 16. 9. E. 4. 15. E. 49. 29. Ass. 13.

A

A man ſeiſed of a Rent ſecke iſſuing out of the Mannor of Dale, taketh a wife the husband releaſeth to the Terre tenant, & warranteth Tenementa prædicta, and dieth, the wife bringeth a writ of Dower of the Rent, the Terre-tenant ſhall vouche, for that albeit the releaſe enured by way of extinguiſhment, yet the Warrantie extended to it, and by warranting of the Land all Rents, &c. iſſuing out of the Land, that are ſuſpended or diſcharged at the time of the Warrantie created, are warranted alſo.

Vide Sect. 741. 45.E.3.Vouch. 72. 9.E.3.78. 18.E.3.55. 30.E.3.30. 21.H.7.9. 3.H.7.4. 7.H.4.17. 10.E.49.b. 21.E.4.16. 14.H.8.6. 30.H.8.Dict. 42.

Sect. 698.

¶ *Garranty que commence per diſſeiſin, &c.* It is called a warranty that commenceth by Diſſeiſin, becauſe regularly the conueyance whereunto the Warranty is annexed doth worke a Diſſeiſin

¶ Garranty q̄ cōmence per diſſeiſin eſt en tiel forṁ, ſicome lou il eſt pier & fits, & le fits purchaſe terre, &c. & leſſa meſme la terre a ſon pier pur terme dans, & pier per ſon fait ent enfeoffa vn auter en fee, & oblige luy & ſes heires a garranty, & le pier deuy, per que le garranty diſcendiſt al fits, ceo garranty ne barrera my le fits, car nient obſtant ceſt garrantie le fits poit bien enter en la terre, ou auer vn aſſiſe enuers lalienee ſil voit, pur ceo que l'garrantie commence per diſſeiſin, car quant le pier que nauoit eſtate forſque pur terme des ans, fiſt vn feoffment en fee, ceo fuit vn diſſeiſin al fits del franktenement que adonqz fuit en le fits. En meſme le maner eſt, ſi le fits leſſa a le pier la terre a tener a uolunt, & puis le pier fait vn feoffment oue garrantie,

WArrantie that commence by diſſeiſin is in this manner, As where there is father and ſon, & the ſoñe purchaſeth land, &c. & letteth the ſame land to his father for terme of yeares, and the father by his deed therof infeoffeth another in fee, and binde him and his heires to Warrantie, & the father dies, whereby the Warrātie deſcendeth to the ſon, this warrantie ſhall not barre the ſonne, for notwithſtāding this warrātie the ſonne may well enter into the land, or have an aſſiſe againſt the Alienee if he will, becauſe the Warrantie commenced by diſſeiſin, for when the father which had but an eſtate for term of years made a feoffment in fee, this was a diſſeiſin to the ſōne of the freehold which then was in the ſonne. In the ſame māner it is if the ſonne letteth to the fa-

7.E.3 41. 43.E. 17. 50.E.3.12. Vide Sect. 611.

In this Section Littleton putteth fiue examples of a Warrantie commencing by Diſſeiſin, viz. of a feoffement made with warranty by Tenant for yeares, by Tenant at will, by Tenant by Elegit, by tenant by Statute Merchant, and by tenant by Statute Staple: all theſe and the other examples that Littleton putteth of this kinde of Warranties in the ſucceeding Sections, haue foure qualities.

Lib. 5. fol. 79. b. Fitzherberts Caſe.

First, that the diſſeiſin is done immediatly to the heire that is to bee bound, and yet if the father bee Tenant for life, the remainder to the ſōne in fee, the father by Coutne and conſent maketh a Leaſe for yeares, to the end that the Leſſee ſhall make a feoffment in fee to whom the father ſhal releaſe with warrantie, and all is executed accordingly, the father dyeth, this Warrantie ſhall not binde, albeit the Diſſeiſin was not done immediately to the ſonne, for the feoffment of the Leſſee is a Diſſeiſin to the father, who is particeps criminis. So it is if one brother make a gift in tayle to another, and the vncle diſſeiſe the Donee, and infeoffeth another with warrantie, the vncle dieth, and the Warrantie deſcendeth vpon the Donor, and then the Donee dyeth without

31.E.3. tit. Garrantie. 28.

garrantie, &c. Et si come est dit de pier, issint poit estre dit de chescun auter auncester, &c. En mesme le maner est si Tenaunt p Elegit, Tenaunt per Statute Merchant, ou Tenant p Statute de le Staple fait feoffment en fee ouesqz Garrantie, ceo ne barrera my heire que doit auer la Terre, pur ceo que tiels Garranties cõmencerent per Disseisin.

ther the Land to hold at will and after the father make a feoffment with Warrantie, &c. And as it is said of the father, so it may be said of euery other ancester &c. In the same mãer is it, if tenant by *Elegit*, tenant by Statute Merchant, or tenãt by Statute staple make a seoffement in fee with warranty, this shall not bar the heire which ought to haue the Land, because such warranties commence by disseisin.

issue, albeit the disseisin was done to the Donée and not to the Donor, yet the warrantie shall not binde him. The father, the sonne & a third person are Joyntenants in fée, the father maketh a feoffmẽt in fée of the whole with warrantie, and dieth, the sonne dieth, the third person shall not only auoid the feoffment for his owne part, but also for the part of the sonne, and he shall take aduantage that the Warrantie cõmenced by Disseisin, though the Disseisin was done to another.

The second qualitie appearing in Littletõs examples is, that the warrantie & Disseisin are simul & semel, both at one & the same time. (y) And yet if a man cõmit a Disseisin of intent to make a feoffment in fée with Warrantie albeit he make the feoffment many yeares after the Disseisin, notwithstanding because the warrantie was done to that intent and purpose, the Law shall adiudge vpon the whole matter, and by the intent couple the Disseisin and the Warrantie together.

(y) 19.H.8.12. lib. 5. fol. 79.b. Fitzh. case.

The third qualitie is, that the Warrantie that commenceth by Disseisin by all these examples (if it should binde) should binde as a Collaterall warrantie, and therefore commencing by Disseisin shall not binde at all.

¶ *Ne barrera my le heire, &c.* For by the authoritie of our Author himselfe, a Lessée for years may make a feoffmẽt, and by his feoffment a fée simple shall passe, so as albeit as to the Lessor it worketh by Disseisin, yet betweene the parties the Warrantie annexed to such estate standeth good: vpon which the Feoffée may vouch the Feoffor or his heires, as by force of a lineall Warrantie. And therefore if a Lessée for yeares or Tenant by Elegit, &c. or a Disseisor incontinent make a feoffment in fée with warrantie, if the Feoffée be impleaded, hée shall vouch the Feoffor, and after him his heire also, because this is a Couenant reall, which binde him and his heires to recompence in value, if they haue assets by discent to recompence, for there is a feoffment de facto, and a feoffment de iure: (*) And a feoffment de facto made by them that haue such interest or possession, as is afore said, is good betweene the parties, and against all men, but only against him, that hath right. And therefore if the Lord be Gardeine of the Land, or if the Tenãt maketh a Lease to the Lord for years, or if the Lord be Tenant by Statute Merchant or Staple, or by Elegit of the Tenancie, & make a feoffment in fée, hée hereby doth extinguish his Seigniorie, although hauing regard to the Lessor it is a Disseisin.

The fourth qualitie is a Disseisin, but that is put for an example, and the rather for that it is most vsuall & frequent, but a Warrantie that commenceth by abatement or intrusion (that is when the abatement or intrusion is made of intent to a make a feoffmẽt in fée with warrantie) shall not binde the right heire, no more then a warranty that commenceth by Disseisin, because all doe commence by wrong. And so it is if the Tenant dieth without heire, and an Ancestor of the Lord enter before the Entrie of the Lord, and make a feoffment in fée with warrantie, and dieth, this Warrantie shall not binde the Lord, because it commenceth by wrong, being in nature of an abatement. Et sic de similibus.

Vide Sect. 611. 699. Bract. fol. 216. 223. 224. Fleta lib. 4 cap. 17. 1, 2. Britton, cap. disseisin. 50. E. 3. 12. b. 8. H. 7. 5. 7. E. 3. 11. 14 E. 3. Feoffments en faits 67. 18 E. 3. Issue 36. 4 E. 2. Briefe 790. 19 E. 2. Ass. 400. 43. E. 3. 7. 17. E. 3. 41. 43. E. 3. Diff. 5. 3. E. 4. 17. 12. E. 4. 12. 10. E. 4. 18. F.N.B. 201 Lib. 3. fol. 78. in Fermors case.

(*) Temps E. 1. Counterplea de Voucher 126. 50. E. 3. Ibid. 124. Vide W. 1. cap. 48. in the second part of the Institutes.

Sect. 699.

¶ ITem, si Gardein en Chiualrie, ou Gardein en Socage fait

ALso if Gardeine in Chiualrie, or Gardeine in Socage make

fait vn Feoffment en fee, ou en fee taile, ou pur terme de vie ouesqz garrantie, &c. tiels garranties ne ſont pas barres a les Heires, as q̃r les terres ſerront diſcendus, pur ceo que ils commence per diſſeiſin.

a Feoffment in Fee, or in Fee taile, or for life, with Warrantie, &c. ſuch Warranties are not barres to the Heires to whom the Lands ſhall bee diſcended, becauſe they commence by Diſſeiſin.

16.E.3.Gar.20.8. Aſſ.2. 43.E.3.7. and the Books aboueſaid. Vide Sect.698.

CHere Littleton addeth the Caſe of Gardeine in Chiualrie, and Gardeine in Socage, and Gardeine becauſe Nurture is alſo in the ſame caſe.

Sect. 700.

13.Aſſ.8. 13.E.3.Gar.24. 25.37. 22.H.6.51. 8.H. 7.6.

CAuer & tener a eux iointment, &c. This is to bee intended of a ioynt purchaſe in fee, for if the purchaſe were to the father & the ſonne, & the heires of the ſonne, and the father maketh a Feoffment in Fee with warrantie, if the ſonne entreth in the life of the father, & the Feoffee re-enter, the father dieth, the ſonne ſhal haue an Aſſiſe of the whole, & ſo is the Booke of 22.H.6. to bee vnderſtood. But if the ſonne had not entred in the life of the father, then for the fathers moitie it had beene a barto the ſonne, for that therein he had an eſtate for life, & therefore the warrantie as to that moitie, had been collaterall to the ſonne, and by Diſſeiſin for the ſonnes moitie, and ſo a warrantie defeated in part, & ſtand good in part. And this appeareth by the example that Littleton hath put. But if the purchaſe had beene to the father and ſonne, and to the Heires of the Father, then the Entrie of the ſonne in the life of the Father, as to the auoydance of the Warrantie, had not auailed him, becauſe his Father lawfully conueyed away his moitie.

CItem, ſi le pier & le fits purchaſe certaine Terres ou Tenements, a auer & tener a eux ioyntm̃t, &c. & puis le pier alien lentier a vn auter, & oblige luy & ſes Heires a garrantie, &c. & puis le pier deuie, cel garrantie ne barrera my le fits de le moitie que a luy affiert de les dits terres ou tenements, pur ceo que quaunt a cel moitie que affiert a le fits, le garrantie commence per Diſſeiſin.

ALſo if Father and Sonne purchaſe certaine Lands or Tenements, To haue and to hold to them ioyntly, &c. and after the father alien the whole to another, and binde him and his Heires to Warrantie, &c. and after the father dieth, this Warrantie ſhall not barre the ſonne of the moitie that belõgs to him of the ſaid Lands or Tenements, becauſe as to that moitie which belongs to the Sonne, the Warrantie commences by Diſſeiſin, &c.

Temps E.1. Vouch. 107. 39.E.3.26. Iohn London's caſe, 14.H.6.

If a man of full age and an Infant make a Feoffment in Fee with Warrantie, this warrantie is not void in part, and good in part, but it is good for the whole againſt the man of full age, and void againſt the Infant: for albeit the Feoffment of an Infant paſſing by Liuerie of ſeiſin be voydable, yet his Warrantie which taketh effect onely by Deed, is meerely void.

Sect.

Sect. 701.

ITem, ſi A. ô B. ſoit ſeiſie dun meſe, & F. de G. que nul droit ad dentrer en meſme le meaſe, claimaunt meſme le meaſe, a tener a luy & a ſes Heires, entra en meſme le meaſe, mes le dit A. de B. adonque eſt continualment demurrant en meſme le meaſe: En ceſt cas le poſſeſſion de franktenement ſerra tout temps adiudge en A. de B. & nemy en F. de G, pur ceo que en tiel caſe lou deux ſont en vn meaſe, ou auters Tenements, & lun claima per lun Title, & lauter p lauter Title, la Ley adiudgera celuy en poſſeſſion que ad droit dauer le poſſeſſion de meſmes les Tenements. Mes ſi en le caſe auant dit, le dit F. de G. fait vn Feoffment a certaine Barretors & Extortioners en le pais, p maintenance de eux auer, de meſme le meaſe per vn fait de Feoffement oue garrantie, per force de quel le dit A. de B.

ALſo if A. of B. bee ſeiſed of a Meſe, and F. of G. that no right hath to enter into the ſame Meſe, claiming the ſayd Meſe to hold to him and to his Heires, entreth into the ſayd Meſe, but the ſame A. of B. is then continually abiding in the ſame Meaſe: In this Caſe the poſſeſſion of the Free-hold ſhall bee alwayes adiudged in A. of B. and not in F. of G. becauſe in ſuch Caſe where two bee in one Houſe or other Tenements, and the one claimeth by one Title, and the other by another Title, the Law ſhal adiudge him in poſſeſſion, that hath right to have the poſſeſſion of the ſame tenements. But if in the Caſe aforeſaid, the ſayd F. of G. make a Feoffment to certaine Barretors and Extortioners in the Countrie, to have maintenance from thē of the ſayd houſe, by a Deed of Feoffment with Warrantie, by force whereof the ſaid

CLou deux ſont en vn meſe, &c. & lun claima per lun title, & lauter per auter title, &c. For the rule is Duo non poſſunt in ſolido vnam rem poſſidere. 17.H.6.fol.28. b. per Newton. Reg:

These words of our author be ſignificāt & materiall: (h) for if a man hath iſſue two daughters, Baſtard eigne & Mulier puiſne, and die ſeiſed & they both enter generally, the ſole poſſeſſion ſhall not be adiudged only in the Mulier, becauſe they both claime by one and the ſame title, and not one by one title, and the other by another title, as our author here ſaith. (h) 17.E.3.59.11.Aſſ. p.23.

(i) If the Tenaunt in an Aſſiſe of an houſe deſire the plaintiffe to dine with him in the houſe, which the plaintiffe doth accordingly, and ſo they bee both in the houſe, and in truth one prētēdeth one title, & the other another title, yet the Law in this caſe ſhall not adiudge the poſſeſſion in him that right hath, becauſe our author here ſaith, hee claimed not his right, and it ſhould be to his prēiudice if the Law ſhould adiudge him poſſeſſion, and a Treſpaſſer he cannot be, becauſe hee was inuited by the Tenant in the Aſſiſe. (i) Pl.Com. 91. the Parſon of Honey Lanes caſe.

CBarretors. A Barretor is a common Moouer, and Exciter, or Maintainer of ſuits, quarrels, or parts, either in Courts or elſewhere in the Countrey. In Courts, as in Courts of Record, or not of Record, as in the Counties, Hundred, or other inferiour Courts. In the Countrie in three manners, Firſt, in diſturbance of the Peace. Secondly, in taking or keeping of poſſeſſions of Lands in cōtrouerſie, not only by force, but alſo by ſubtil-

See the Indiſement of a common Barretor. W.1. cap.18 & 32.40 E.3.33. Lib.8.fol.36.b. Caſe de Barretrie.

tie and a deceit, and moſt commonly in ſuppreſſion of truth and right, Thirdly, by falſe inuentions, and ſowing of calumniations, rumors, and reports, whereby diſcord and diſquiet may grow betweene neighbours.

33.E.1. Stat. de Conſpiracie. Lib.8.vbi ſupra.

¶ *Barretor* is deriued of this word (Barret) which ſignifieth not only a wrangling ſuit, but alſo ſuch brawles and quarrels in the Countrey, as are afore ſaid.

P. Com.fol.64. Lib.10.fol.101,102. Beauſages Caſe.

¶ *Extortioners.* Extortion in his proper ſenſe is a great miſpriſion by wreſting or vnlawfully taking by any officer by colour of his Office, any mony or valuable thing of or from any man, either that is not due, or more than is due, or before it be due, Quod non eſt debitum, vel quod eſt vltra debitum, vel ante tempus quod eſt debitum: For this it is to be knowne, that it is prouided by the (l) Statute of W.1. That no Sheriffe nor any other Miniſter of the King, ſhall take any reward for doing of his Office, but onely that which the King alloweth him, vpon paine that hee ſhall render double to the Partie, and be puniſhed at the Kings pleaſure. And this was the ancient Common Law, and was puniſhable by fine and impriſonment, but the Statute added the aforeſaid penaltie. But ſome latter Statutes hauing permitted them to take in ſome caſes, by colour thereof, the Kings Officers and Miniſters as Sheriffes, Coroners, Eſcheators, Feodaries, Gaolers, and the like, doe offend in moſt caſes, and ſeeing this Act yet ſtandeth in force, they cannot take any thing but where, and ſo farre as latter Statutes haue allowed vnto them. But yet ſuch reaſonable Fées as haue been allowed by the Courts of Iuſtice of ancient time to inferiour Miniſters and Attendants of Courts for their labour and attendance if it be asked and taken of the Subiect, is no extortion.

(l) W.1.c.26. &c. W.1. c.10.42. E.3.5.27. Aſſ.14 Pl.Com.68.

23.H.6.c.10. 33.H.6.22 21.H.7. 17. Stanf.49. 3.E.3. Cor. 372.

(n) Hil. 13. Iac. Reg.

And all this was reſolued (n) by the whole Court of Kings Bench, betweene Shurley Plaintiffe, and Packer Deputie of one of the Sheriffes of London, in an action vpon the Caſe in the Kings Bench.

See the Statute of 21. H.8. cap.5. ſetting downe the Fées of Ordinaries, Regiſters, and others Officers, in certaine Caſes, and many other Statutes, as for example the Statute of 19.H.7.cap.8. againſt taking of Shewage (that is, taking of any thing for ſhewing of Wares and Merchandiſes that be truly cuſtomed to the King before) and the like.

Pl. Com. in Dine & Manninghams caſe. Mir. cap.5.§.1.

Of this crime it is ſaid, That it is no other than Robberie: And another ſaith, That it is more odious than Robberie, for Robberie is apparent, and hath the face of a crime, but Extortion puts on the viſure of Vertue, for expedition of Iuſtice, and the like, and it is euer accompanied with that grieuous ſinne of periurie.

7.E.4.21.

But largely Extortion is taken for any oppreſſion by extort power, or by colour or pretence of Right, & ſo Littleton taketh it in this place. Extortio is deriued from the Verbe Extorqueo, and it is called Crimen expilationis, or concuſſionis: And here Barretors and Extortioners are put but for examples, for if the Feoffment be made to any other perſon or perſons, the Law is all one.

¶ *Pur maintenance de eux auer.* Maintenance, Manutenentia is deriued of the Verbe Manutenere, & ſignifieth in Law, a taking in hand, bearing vp or vpholding of quarrels and ſides, to the diſturbance or hindrance of common right, Culpa eſt rei ſe immiſcere ad ſe non pertinenti, and it is twofold, One in the Countrey, and another in the Court. For quarrels and ſides in the court, (k) the Statutes haue inflicted grieuous puniſhments. But this kinde of maintenance of quarrels and ſides in the Countrey, is puniſhable only at the ſuit of the King, (r) as it hath beene reſolued. And this Maintenance is called Manutenentia, or Manutentio ruralis, for example, as to take poſſeſſions, or to keepe poſſeſſions, whereof Littleton here ſpeaketh, or the like.

(k) 1.E.3. cap.14. 20.E.3.cap.4.5.

(r) Mich.7.Ia. in the Starre-Chamber.

The other is called Curialis, becauſe it is done pendente placito, in the Courts of Iuſtice, and this was an Offence at the Common Law, and is threefold.

33.E.1.Stat. 2. in fine. Regiſt.183. 6.E.3.33. 22.H.6.7. 9.H.7.22.

Firſt, To maintaine, to haue part of the Land, or any thing out of the Land, or part of the Debt, or other thing in Plea or Suit, and this is called Cambipartia, Champertie.

The ſecond is, When one maintaineth the one ſide, without hauing any part of the thing in

Plea

ne oſaſt pas demurrer en l'Meaſe, mes alaſt hors d'l meaſe, ceſt Garrantie commence per Diſſeiſin, pur ceo q̃ tiel Feoffment fuit la cauſe que le dit A. de B. relinquiſt le poſſeſſion de meſme le Meaſe.

A. of B. dare not abide in the houſe, but goeth out of the ſame this Warrantie commenceth by Diſſeiſin, becauſe ſuch Feoffment was the cauſe that the ſaid A. of B. relinquiſhed the poſſeſſion of the ſame Houſe.

Plea, or Suit, and this maintenance is twofold, generall maintenance, and speciall maintenance, whereof you shall reade at large in our Bookes, which were too long here to bee inserted.

30. Ass. 5. 19. E. 4. 3. 2. 2. H. 6. 12. 34. H. 6. 2. 11. H. 6. 23. 8. H. 3. 8. 10. E. 4. 19. W. 1. cap. 15. 28. W. 2. c. 49. Artic. super Cart. cap. 11. F. N. B. 171, 172. Mirror cap. 1. §. 3.

The third is when (u) one laboureth the Jury, if it be but to appeare, or if he instruct them, or put them in feare, or the like, he is a maintainer, and he is in Law called an Embracer & an action of maintenance lyeth against him, and if he take money a decies tantum may bee brought against him. And whether the Jury passe for his side or no, or whether the Jurie giue any verdict at all, yet shall he be punished as a Maintener or Embracer either at the suit of the King or partie.

(u) 13. H. 4. 16. b F. N. B. 171. 11. H. 6. 10. 37. H. 6. 31.

Here in this case that Littleton putteth, the feoffment is void by the Statute (a) of 1. R. 2. for thereby it is enacted, that feoffments made for Maintenance shall be holden for none, and of no value so as Littleton putteth his case at the Common Law, for he seemeth to allow the feoffment, where he saith, tiel feoffment fuit le cause, &c. but some haue said that the feoffment is not void betweene the Feoffor, and Feoffee, but to him that right hath.

(a) 1. R. 2. cap. 9. Vide 27. H. 2. fol. 23.

Now since Littleton wrote there is a notable Statute (b) made in suppression of the causes of vnlawfull maintenance (which is the most dangerous enemie that Justice hath) the effect of which Statute is:

(b) 32. H. 8. cap. 9.

First, That no person shall bargaine, buy or sell, or obtaine any pretenced Rights or Titles.

Secondly, Or take, promise, grant, or couenant to haue any Right, or Title of any person in or to any Lands Tenements or Hereditaments, but if such person which so shall bargain, &c. their ancestors, or they by whom he or they claime the same haue bene in possession of the same, or of the Reuersion or Remainder thereof, or taken the Rents or Profits thereof by the space of one whole yeare, &c. vpon paine to forfeit the whole value of the Lands, &c. and the buyer or taker, &c. knowing the same, to forfeit also the value.

Thirdly, Prouided that it shall be lawfull for any person, being in lawfull possession, by taking of the yearely Farme, Rents or Profits, to obtaine and get the pretenced Right, or Title, &c. of any Lands whereof he or they shall be in lawfull possession.

For the better vnderstanding of which Statute, you must obserue, that title or right may be pretenced two manner of wayes:

First, When it is meerely in pretence or supposition, and nothing in verity.

Secondly, When it is a good right or title in verity, and made pretenced by the act of the partie, and both these are within the said Statute; for example, If A. be lawfull Owner of Land, and is in possession, B. that hath no right thereunto granteth to, or contracteth for the land with another, the Grantor and the Grantee (albeit the grant be meerely void) are within the danger of the Statute. For B. hath no right at all, but only in pretence. If A. bee disseised in this case, A. hath a good lawfull right, yet if A. being out of possession granteth to, or contracteth for the Land with another, he hath now made his good right of entrie pretenced within the Statute, and both the Grantor and Grantee within the danger thereof. A fortiori of a right in action. Quod nota.

Pl. Com. fol. 80. & 6. Partridges Case.

It is further to be knowne, that a right or title may be considered three manner of wayes.

First, As it is naked and without possession. Secondly, When the absolute right commeth, by Release or otherwise to a wrongfull possession, and no third person hath either Ius proprietatis, or Ius possessionis. The third, when he hath a good right, and a wrongfull possession. As to the first, somewhat hath beene said, and more shall be said hereafter. As to the second, taking the former example, if A. be disseised, and the Disseisee release vnto him he may presently sell, grant or contract for the Land, and need not tarrie a yeere, for it is a rule vpon this Statute, that whosoeuer hath the absolute Ownership of any Land, Tenements, or Hereditaments (as in this case the Disseisor hath) there such Owner may at his pleasure bargaine, grant, or contract for the Land, for no person can thereby be preiudiced or grieued. And so if a man morgage his Land, and after redeeme the same, or if a man recouer Land vpon a former title, or be remitted to an ancient right, he may at any time bargaine, grant, or contract for the Land, for the reason aforesaid. As to the third, if in the case aforesaid the Disseisor dieth seised, and A. the Disseisee entreth, and disseise the heire of the Disseisor, albeit he hath an antient right, yet seeing the possession is vnlawfull, if he bargaine or contract for the Land before hee hath beene in possession by the space of a yeare, he is within the danger of the Statute, because the heire of the Disseisor hath right to the possession, and he is thereby grieued, & sic de similibus, & albeit he that hath a pretenced right (and none in verity) getteth the possession wrongfully, yet the Statute extendeth vnto him, as well as where he is out of possession.

& he release to the Disseor

Pl. Com. Partridges case vbi sup. 6. E. 6. Brooke Tit. Maintenance. 38.

Note the words of the Statute bee (any pretenced right) therefore a Lease for yeares is within the Statute, for the Statute saith not (the right) (but any right) and the offendour shall forfeit the whole value of the Land. And where the Statute speaketh of rights in the plurall number, yet any one right is within the Statute. (a) But yet if a man make a lease for yeares to another to the intent to trie the title in an ejectione firmæ that is out of the Statute, because

23. Eliz. Dier. 374. Pl. Com. Partridges case. fol 8.

(a) Mich. 30. & 31. Eliz. 2811. inter Finch. & Cockham in Com. Banc.

because it is in a kinde of course of Law, but if it be made to a great man, or any other to sway or countenance the cause, that is within this statute.

(b) Lib. 4. fol. 26. Copihold Cases.

Also the statute speakes (of any right or title to any Land, &c.) (b) A customary right or a pretence thereof to Lands holden by Copie is within this statute.

6. E. 6. tit. maintenance Brooke 38.

The said proviso (which is rather added for explanation, than of any necessitie) extendeth only to a pretenced right or title, & to a good and cleare right, and therefore without question, any that hath a iust & lawfull estate may obtaine any pretenced right by release or otherwise, for that cannot be to the preiudice of any, nay, as hath beene said, a Disseisor that hath a wrongfull estate may obtaine a release of the Disseisée, and that is not within the body of the act, and consequently standeth not in néed of any proviso to protect him.

(c) 34. H. 8. Dier. 52.

And therefore (c) if there be Tenant for life, the Remainder in fée by lawfull and iust title, he in the Remainder may obtaine & get the pretenced right or title of any stranger, not onely for that the particular Estate and the Remainder are all one, but for that it is a meane to extinguish the seeds of troubles and suits, and cannot be to the preiudice of any, as hath beene said. And where the statute saith, (being in lawfull possession by taking the yearly Rent, &c.) those words are but explanatory, & put for example, for howsoeuer he be lawfully seised in Possession, Reuersiõ, or Remainder, it sufficeth though he neuer tooke profit. But the matter obseruable vpon this Prouiso, which is worthy of obseruation, is, that if a Disseisor make a Lease for life, liues, or yeares, the remainder for life, in tayle, or in fee, he in remainder cannot take a promise or Couenant, that when the Disseisee hath entred vpon the Land, or recouered the same that then he should conuey the Land to any of them in Remainder, thereby to auoid the particular estate, or the interest or estate of any other, for the words of the Prouiso be, (buy, obtaine, get or haue by any reasonable way or meane) and that is not by promise or couenant to conuey the Land after entry or recouery, for that is neither lawful being against the expresse purview of the body of the act, and not reasonable, because it is to the preiudice of a third person. But the reasonable way or meane intended by the statute, is by Release or Confirmation, or such Conueyances as amount to as much, and this agreeth with the letter of the Law, viz. the pretenced Right or Title of any other person, and Rights and Titles are by Release or Confirmation, as by reasonable wayes and meanes lawfully transferred and extinct, and the words of Promise or Couenant, &c. which are prohibited by the body of the act, are omitted in the Prouiso.

¶ *Relinquist le possession, &c.* This must be vnderstood, that before liuery of seisin vpon the feoffement, A. de B. departed out of the house, for otherwise the liuery and seisin should be void, because A. de B. was in possession. And Littleton here saith, Per vn fait de feoffment, so as albeit the Deed were made before the departure it is not materiall, but the departure must be before the liuery of seisin, for that doth worke the disseisin. And yet that which Littleton saith is true, that the feoffment was the cause that he relinquished his possession, for otherwise he would not haue done it.

But admit that A. de B. had departed for any other cause, yet if F. de G. enter and enfeoffe certaine Warretors or Extortioners, or any other with Warrantie, this is a warrantie that commenceth by disseisin, for that the feoffment worketh a disseisin.

Sect. 702.

See before in the chapter of Releases.

¶ This doth explaine that which hath beene said before. And albeit Littleton vseth the words (and incontinently thereof make a Feoffment) and that in this case of Littleton the disseisin and feoffment were made (quasi vno tempore) yet if the Disseisin were made to the intent to make a feoffmẽt with warrantie, albeit the Feoffment be long after, this (as hath beene said) is a Warrantie

46. E. 3. 6.

¶ Item, si hom̃ que nul droit ad denter en auters Tenements, entra en mesmes les tenements, & incontinẽt ent fait vn Feoffment as auterz per son fait oue Garrantie, & deliuer a eux seisin, cel Garrantie commence per disseisin

Also if a man which hath no right to enter into other Tenements enter into the same Tenements, & incontinently make a Feoffment therof to others by his deed with warranty & deliuer to them seisin, this warranty cõmence

ſin, pur ceo que le diſſeiſin et le feoffement fueront faits quaſi uno tempore. Et q̃ ceo eſt ley, poiez veier en vn plee M. 11. Ed. 3. en vn briefe de Formedon en le reuerter.

by diſſeiſin, becauſe the diſſeiſin and feoffement were made as it were at one time. And that this is Law, you may ſee in a plee, *M.* 11 *E.* 3. in a Writ of *Formedon* in the reuerter.

that commenceth by Diſſeiſin.

¶ *Mich.* 11. *E.* 3. This is miſtaken, and ſhould be (d) 31. E. 3. and ſo is the originall, which caſe you ſhall ſee in Maſter Fitzherberts Abridgement, for there is no booke at large of that yeare. Hereby you may perceiue that learned men looke not only to the caſes reported, but vnto Records, as you may ſee Littleton did, for Fitzherbert put this caſe in print long after, as elſewhere hath beene ſhewed.

(d) 31. E. 3. tit. Garr. 28.

Sect. 703.

¶ Garranty lineal eſt, lou hõe ſeiſie de terres en fee, fait feoffement p ſon fait a vn auter, & oblige luy & ſes heires a garranty, & ad iſſue et mozuſt, et le garrantie diſcendiſt a ſon iſſue, ceo eſt lineal garranty. Et la cauſe pur ceo q̃ eſt dit lineall garrantie, neſt pur ceo que le garranty diſcendiſt de le pier a ſon heire, mes la cauſe eſt pur ceo que ſi nul tiel fait oue garranty fuiſſoit fait per le pier, donque le dzoit ð leſtenements diſcenderoit al heire, & lheire conueyeroit le diſcent de ſon pier, &c.

WArranty lineall is, where a man ſeiſed of lands in fee, maketh a feoffement by his Deed to another, & bindes himſelfe and his heires to warrantie, & hath iſſue and die, and the Warranty deſcend to his iſſue, this is a lineal warranty. And the cauſe why this is called lineall warrantie is not becauſe the Warrantie deſcẽdeth from the father to his heire, but the cauſe is for that if no ſuch Deed with Warrantie had beene made by the father, then the right of the tenements ſhould deſcend to the heire, and the heire ſhould conuey the diſcẽt from his father, &c.

¶ *Arranty lineal. &c.* A Warrantie lineall is a Couenant reall annexed to the Land by him which either was owner, or might haue inherited the Land, and from whom his heire lineall or collaterall might by poſſibilitie haue claimed the Land as heire from him that made the warranty, whereof Littleton himſelfe putteth diuers caſes, which ſhall be explained in their proper places. And in this caſe put in this Section Littleton (once for all) ſheweth, that the reaſon of the example here put, is becauſe if no ſuch alienation with warrantie (for ſo is Littleton to be intended) had bẽene made, the very lands had deſcended to the heire, ſo as the caſe being put of lands in fee ſimple the alienation without the Warrantie had barred the heire. And note that it is called a lineall Warrantie, not becauſe it muſt deſcend vpon the lineall heire, for be the heire lineall or collaterall, if by poſſibility he might claime the land from him that made the Warrantie, it is lineall, hauing regard to the Warrantie, and title of the land. And alſo it is called lineall, in reſpect that the Warrantie made by him that had no right, or poſſibility of right to the land, is called Collaterall in regard that it is collaterall to the title of the lãd. And it is alſo to be obſerued that in al the caſes that Littleton hath put or ſhal put the lineal or collateral warranty doth binde the heire, and therefore the ſucceſſour claiming in another right, ſhall not be bound by the warrantie of any natural Anceſtour. For which cauſe (c) in a Iuris vtrum brought by a Parſon of a Church, the collaterall Warrantie of his Anceſtour is no barre, for that he demandeth the land in the right of his Church in his politike capacitie, & the Warrantie deſcendeth on him in his naturall capacitie. (d) But ſome haue holden that if a Parſon bring an Aſſiſe, that a collaterall warranty of his Anceſtour ſhall binde him, and their reaſon is, for that the Aſſiſe

35. E. 3. Garr. 73.

(c) 27. H. 6. Garr. 48.

(d) 34. E. 3. Garr. 71.

Aſſiſe is brought of his poſſeſſion & ſeiſin, and he ſhall recouer the meane profits to his owne vſe. But ſeeing he is ſeiſed of the freehold, whereof the Aſſiſe is brought in jure Eccleſiæ, which is another right, then the Warrantie, it ſeemeth that it ſhould not be any barre in the Aſſiſe. The like Law is of a Biſhop, Archdeacon, Deane, Maſter of an Hoſpitall, and the like, of their ſole poſſeſſions, and of the Prebend, Vicar, and the like.

(*)45.Aſſ.6. 16 E.3. 56. Pl.Com.234. & 553.554.

Et oblige luy & ſes heires. *King H.3. gaue a Manner to Edmund Earle of Cornwall, and to the heires of his body, ſauing the poſſibilitie of Reuerter, and died, The Earle before the Statute of W.2. cap.1. De donis conditionalibus by Deed gaue the ſaid Manner to another in fee with warrantie in exchange for another Manner, and after the ſaid Statute, in the 28. yeare of E.1, dieth without iſſue, leauing Aſſets in fee ſimple. Which warrantie and Aſſets deſcended vpon King E.1. as Coſin germaine, and heire of the ſaid Earle, viz. ſon and heire of King Henry the third, brother of Richard Earle of Cornwall, father of the ſaid Earle Edmund. And it was adiudged, that the King as heire to the ſaid Earle Edmund, was by the ſaid Warrantie and Aſſets barred of the poſſibilitie of Reuerter, which he had expectant vpon the ſaid gift, albeit the warrantie and Aſſets deſcended vpon the naturall body of King E.1. as heire to a ſubiect, and King E.1. claimed the ſaid Manner, as in his Reuerter in jure Coronæ in the capacity of his body politike, in which right he was ſeiſed before the gift. In this caſe, how by the death of the ſaid Earle Edmund without iſſue, the Kings title by Reuerter, and the Warrantie, and Aſſets came together, and that the Warrantie was collaterall, yet the King ſhall not be barred without Aſſets, as a ſubiect ſhall be & many other things are to be obſerued in this caſe, which the learned Reader will obſerue.

Vid 27.H.6. Garr.48. 34.E.3.Garr.71.

Vid.Sect.711,712.

Sect. 704, 705.

CAr ſi ſoit pier & fits & le fits purchaſe terr̃s en fee, et le pier de ceo diſſeiſiſt ſon fits, & aliena, a vn auter en fee per ſon fait: & per meſme le fait oblige luy et ſes heires a garranter meſmes les tenements, &c. et le pier mozuſt, oze eſt le fits barre dauer les dits tenements, car il ne poit per aſcun ſuit, ne per auter meane de la ley, auer meſmes les terres per cauſe del dit garrantie, et ceo eſt vn collateral garranty, et vncoze le garranty diſcendiſt lynealment de le pier a le fits.

FOr if there be father and ſonne, and the ſonne purchaſe lands in fee, & the father of this diſſeiſeth his ſonne, and alieneth to another in fee by his Deed, and by the ſame Deed binde him and his heires to warrant the ſame tenements, &c. and the father dieth, now is the ſon barred to haue the ſaid tenemẽts, for he cannot by any ſuit, nor by other meane of Law haue the ſame lands by cauſe of the ſaid warrantie. And this is a collaterall Warrantie, and yet the Warrantie deſcendeth lineally from the father to the ſonne.

Sect. 705.

CMEs pur ceo que ſi nul tiel fait oue garr̃ vſt eſtre fait, le fits en nul maner puiſſoit conueyer le title que il ad a les tenements de ſon pier a luy, entant que ſon pier nauoit aſcun eſtate

BVt becauſe if no ſuch Deed with Warrantie had beene made, the ſonne in no manner could conuey the title which hee hath to the tenements from his father unto him, inaſmuch as his fa-

estate en droit en les tenements, pur ceo tiel Garrantie est appel collaterall Garrantie, entant que celuy que fist le Garrantie est collateral a le title de les tenements, & ceo est tant adire que cestuy a que le Garrantie discendist, ne puissoit a luy conueyer le title que il ad de les Tenements per my cestuy que fist le Garrantie, en cas que nul tiel Garrantie fuit fait.

ther had no estate in right in the Lands, wherefore such Warrantie is called Collaterall Warrantie, inasmuch, as he that maketh the Warrãtie is collaterall to the title of the Tenements, and this is asmuch to say, as hee to whom the Warrantie descendeth, could not conuey to him the title which hee hath in the Tenements by him that made the Warrantie, in case that no such Warrantie were made.

HEre Littleton putteth an example, prouing that it is not called Lineall, because it descendeth lineally from the Father to the Son, for in this case the Warrantie descendeth lineally, and yet is a collaterall Warrantie. In this example you must intend that the Disseisin was not of intent to alien with Warrantie to barre the Sonne, but here the Disseisin being done to the Sonne, without any such intent, the alienation afterwards with Warrantie doth barre the Sonne, because that albeit the Warrantie doth lineally descend, yet seeing the title is Collaterall, that is, that the Sonne claimeth not the Land as Heire to his Father, therefore in respect of the title it is a Collaterall Warrantie. And thus doth Littleton agree (c) with the Authorities of our Bookes. So as the diuersities doe stand thus. First where the Disseisin and Feoffement are vno tempore, and where at seuerall times. Secondly, where the Disseisin is with intent to alien with Warrantie, and where the Disseisin is made without such intent, and the alienation with Warrantie afterwards made.

5.E.3.14. 46.E.3 6. 16 H.8.12. 8.R.2.Gar. 100.
Vide Sect.716.

(c)46.E.3. 6, 5.E.3. 14. 19.H.8.22.

Sect. 706.

CItem, si soit aiel, pier, & fits, & le aiel soit disseisie, en que possession le pier releas p̄ son fait oue Garrantie, &c, & morust, & puis laiel morust, ore le fits est barre dauer les tenements per le Garrantie del pier. Et ceo est appel lineal Garrantie, pur ceo que si nul tiel Garrantie fuit, le fits ne puissoit conueyer le droit de les Tenements a luy, ne monstre coment il est Heire al Aiel forsALso if there bee Grandfather, Father, and Son, and the Grandfather is disseised, in whose possession the Father releaseth by his Deed with Warrantie, &c. and dieth & after the Grandfather dieth, now the Son is barred to haue the Tenements by the warranty of the Father. And this is called a lineall Warrantie, because if no such Warrantie were the Son could not conuey the right of the Tenements to him, nor

HEre Littleton putteth an example where the son must claime the Land as Heire to his Grandfather, and yet because hee cannot make himselfe Heire to his Grandfather but by his father it is lineall.

1.H.4.33.35.E.3. Gar.73.

And it is to bee obserued, that the Warrantie in this case descended vpon the son, before the discent of the right, which happened by the death of the Grandfather in whom the right was, Vide Littleton cap. de Releases, and after in this Chapter, Sect. 707. & 741.

C *Pier releaſe per ſon fait oue Garrantie.*

(f) It is to be knowen, that vpon euerie Conueyance of Lands, Tenements, or Hereditaments, as vpon Fines, Feoffments, Gifts, &c. Releases and Confirmations made

(f)14.E.3. Voucher 108. 16.E.3 ibid.87. 18 E.3.ibid.6.10.E.3.52. 21.E.3.27. 11.H.4. 22. 44.E.3.Cont.de Vouch. 22. 12.H.7.1.
Vide Sect.733.738.745.

made to the Tenant of the Land, a Warrantie may bee made, albeit hee that makes the Releaſe or Confirmation, hath no right to the Land, &c.

que per meane del Pier.

ſhew how hee is Heire to the Grandfather but by means of the Father.

but ſome doe hold, That by Releaſe or Confirmation, where there is no eſtate created, or tranſmutation of poſſeſſion, a Warrantie cannot be made to the Aſſignée.

Sect. 707.

CItem, ſi home ad iſſue deux fits & eſt diſſeiſie, & leigne fits releſſa al diſſeiſor per ſon fait oue Garranty, &c. & mozuſt ſans iſſue, & apres ceo le Pier mozuſt, ceo eſt vn lineall Garrantie al puiſne fits, pur ceo que coment q̃ leigne fits mozuſt en la vie le Pier, vncoze pur ceo que per poſſibilitie, il puiſſoit eſtre q̃ il puiſſoit conueier a luy le title del terre per ſon eigne frere, ſi nul tiel Garrantie fuiſſoit. Car il puiſſoit eſtre que apres la mozt le pier, leigne frere entroit en les Tenements & moruſt ſans iſſue, & donque le puiſne fits conueyera a luy le title per leigne fits. Mes en tiel cas ſi le puiſne fits releſſe oue Garrantie a le Diſſeiſoz, & mozuſt ſans iſſue ceo eſt vn collateral Garrantie al eigne fits, pur ceo que de tiel terre que fuit al Pier, leigne per nul poſſibilitie poit conueyer a luy le title per meane de le puiſne fits.

ALſo if a man hath iſſue two ſonnes, and is diſſeiſed, and the eldeſt ſonne releaſe to the Diſſeiſor by his Deed with Warrantie, &c. and dies without iſſue, and afterwards the Father dieth, this is a lineall Warrantie to the younger Sonne, becauſe albeit the eldeſt Soñe died in the life of the Father, yet by poſſibilitie it might haue beene, that hee might conuey to him the Title of the Land by his elder brother if no ſuch Warrantie had beene. For it might bee, that after the death of the Father the elder brother entred into the Tenements and died without iſſue, and then the yonger Sonne ſhall conuey to him the title by the elder Son. But in this caſe if the younger Sonne releaſeth with Warr' to the diſſeiſor, & dieth without iſſue, this is a collaterall Warr' to the elder Son, becauſe that of ſuch Land as was the Fathers, the elder by no poſſibilitie can conuey to him the title by meanes of the younger Sõ.

35.E.Gar.73. 11.H.4. 33.

CHere Littleton putteth an example, where the Heire that is to be barred by the Warrantie, is not to make his Diſcent by him that made the Warrantie, as in the caſe beforе; and yet becauſe by poſſibilitie he might haue claimed by the eldeſt Sonne, if he had ſuruiued the Father, and died without Iſſue, and ſo the younger brother might by poſſibilitie haue beene Heire to him, the Warrantie is lineall.

And here it is to be noted, that the warrantie of the eldeſt Sonne deſcended before the right deſcended, whereof more ſhall be ſaid hereafter, Sect. 741. and the opinion of Littleton in this Caſe is holden for Law, againſt the opinions in 35.E.3. Gar. 73.

9.E.3.16. 38.E.3.21. 46.E.3.26. 8.R.2. Gar. 101

CMes en tiel caſe le puiſne fits releaſe oue Garrantie, &c. This Warrantie in this Caſe is collaterall to the eldeſt Sonne, and to the Iſſues of his bodie: but if the eldeſt Sonne dieth without Iſſue of his bodie, then the Warrantie is lineall to the Iſſues of the bodie of the youngeſt: and ſo the Warrantie that was collaterall to ſome perſons, may become lineal to others.

Sect.

Sect. 708.

¶ Item, ſi Tenant en le Taile ad iſſue trois fits, & diſcontinue le Taile en fee, & le mulnes fits releſſa per ſon fait al Diſcontinuee, & oblige luy & ſes heires a Garrantie, &c. & puis le tenant in le Taile mozuſt, & le mulnes fits mozuſt ſans iſſue, oze leigne fits eſt barre dauer aſcun recouerie per Bziefe de Formedon, pur ceo que le Garrantie del mulnes frere eſt collateral a luy, entant que il ne poit per nul manner conueyer a luy per fozce del taile aſcun diſcent per le mulnes, & pur ceo cẽ vn collaterel Garrantie. Mes en cẽ Cas ſi leigne Fits deuie ſans iſſue, oze le puiſn frere poit bien auer vn bziefe de Formedõ en le diſcender, & recouera meſme le fre, pur ceo que le Garrantie del mulnes eſt lineal al Fits puiſne pur ceo que il puiſſoit eſtre que per poſſibilitie le mulnes puiſſoit eſtre ſeiſie p fozce del Taile apzes la mozt ſon eigne Frere, &

ALſo if Tenant in Taile hath iſſue three ſonnes, and diſcontinue the Tayle in fee, & the middle ſon releaſe by his Deed to the Diſcontinuee, and binde him & his heires to Warrantie, &c. and after the Tenãt in taile dieth, and the middle ſonne dieth without iſſue, now the eldeſt ſonne is barred to haue any recouerie by Writ of *Formedon*, becauſe the Warrantie of the middle brother is collaterall to him, inaſmuch as hee can by no meanes conuey to him by force of the Tayle any Diſcent by the middle, and therefore this is a collateral warrantie. But in this caſe if the eldeſt ſonne die without iſſue, now the youngeſt brother may well haue a Writ of *Formedon* in the diſcẽder & ſhal recouer the ſame land, becauſe the warrantie of the middle is lineall to the youngeſt ſon, for that it might bee that by poſſibilitie the middle might bee ſeiſed by force of the taile after the death of his eldeſt

¶ Hereby it alſo appeareth, That a Warrantie that is collaterall in reſpect of ſome perſons, may afterwards become lineall in reſpect of others. Whereupõ it followeth.* That a Collateral warrantie doth not giue a Right, but bindeth only a Right ſo long as the ſame continueth: but if the Collaterall warrantie be determined, remoued, oz defeated, the Right is reuiued; (f) And yet in an Aſſiſe the Plaintiffe hath made his title by a Collateral Warrantie.

8.R.2 Gar.101.

*43.Aſſ.44. 24.H.8.tit. Taile Br. 7. H.5.6.tit. Aſſ.350.34.E.3.Droit.29. 19.H.6.59. 21.H.7.40. 5.H.7.29. 3.H.7.9.b.

(f)16.Aſſ.p 16.27.Aſſ.74. 29.Aſſ.50. 43.Aſſ.8. 14.H.4.13. 19.H.6.60.

¶ *Barre* is a word common aſwell to the Engliſh as to the French, of which commeth the Nowne, a Bar Barra. It ſignifieth legally a deſtruction foz euer, oz taking away for a time of the Action of him that right hath. And Barra is an Italian word, and ſignifieth Barre, as we vſe it, and it is called a Plea in Barre, when ſuch a Barre is pleaded. Here Litt. putteth an example of a barre of an eſtate taile by a Collaterall warranty. It is to be obſerued, That in ſome Caſes an Eſtate taile may be barred by ſome Acts of Parliament made ſince Littleton wzote, and in ſome caſes an Eſtate taile cannot be barred, which might when Littleton wzote haue been barred. Fozexample, If Tenant in Tayle leuie a Fine with Pzoclamations accozding to the ſtatute, this is a barre to the Eſtate taile, but not to him in reuerſion oz remainder, if hee maketh his claime, or purſue his Action within fiue yeares after the ſtate Taile ſpent.

4.H.7.cap.24. & 32.H.8. c.36.

(b) If a gift be made to the eldeſt ſonne, and to the heires of his bodie, the remainder to the Father & to the Heires of his bodie, the father dieth, the eldeſt ſonne leuieth a Fine with pzoclamations, & dieth with-

(b) Daliſon 2.El. & 7.El. Vide lib. 3 fol. 84. le caſe de Fines.

donque le puisne frer puissoit conueyer son title de Discent per le mulnes.

brother, and then the yoūgest brother might conuey his title of Discent by the midle brother.

without issue, this shall barre the second Sonne for the remainder discended to the eldest.

If Tenant in taile be disseised, or haue a right of action, and the Tenant of the Land leuie a fine with proclamations, and fiue yeares passe, the right of the estate taile is barred.

(b) If Tenant in taile in possession, or that hath a Right of Entrie bee attainted of high treason, the estate taile is barred and the Land is forfeited to the King; and none of these were barres when Littleton wrote. Lineall Warrantie and Assets was a barre to the estate taile when Littleton wrote, whereof more shall be said hereafter.

(c) A common recouerie with a Voucher ouer, and Iudgement to recouer in value was a barre of the estate taile when Littleton wrote. (d) And of common recoueries there be two sorts, viz one with a single Voucher, and another with a double Voucher, and that is more common and more safe: there may be more Vouchers ouer.

(e) If the King had made a gift in taile, and the Donee had suffered a common recouerie, this should haue barred the estate taile in Littletons time, but not the reuersiō or remainder in the King. And so if such a Donee had leuied a fine with Proclamations after the Statute of 4. H. 7. this had barred the estate taile, although the reuersion was in the King. (f) But since Littleton wrote, a Common Recouerie had against Tenant in taile of the Kings gift, or such a fine leuied by him, the reuersion continuing in the Crowne, is no barre to the estate taile by the Statute of 34. H. 8. And where the words of the Statute be (whereof the reuersion or remainder at the time of such recouerie had, shal be in the King) these ten things are to be obserued vpon the construction of that act.

First, that the estate taile must bee created by a King, and not by any Subiect, albeit the King be his heire to the reuersion, for the Preamble speakes of gifts made to Subiects, and none can haue Subiects but the King. And also in the Preamble it is said (for seruice done to the Kings of the Realme) and the body of the Act referreth to the Preamble. (g) And therefore if the Duke of Lancaster had made a gift in taile, & the reuersion descended to the King, yet was not that estate taile, restrained by that Statute, and so of the like.

Secondly, If the King grant ouer the reuersion, then a recouerie suffered will barre the estate taile, because the King had no reuersion at the time of the recouerie.

Thirdly, If the King make a gift in taile, the remainder in taile, or grant the reuersion in taile, keeping the reuersion in the Crowne, a recouerie against Tenant in taile in possession shall neither barre the estate taile in possession by the expresse purview of the Statute, nor by consequence the state in remainder or reuersion, for that the reuersion or remainder cannot be barred, but where the estate taile in possession is barred.

Fourthly, If a Subiect make a gift in taile, the Remainder to the King in fee, albeit the words of Statute be, (whereof the Reuersion or Remainder of the same, &c.) yet seeing the estate in taile was not created by a King, as hath beene said, the estate taile may bee barred by a common recouerie.

Fifthly, If Prince Henrie Sonne of Henrie the Seuenth, had made a gift in taile, the Remainder to Henrie the Seuenth in fee, which Remainder by the death of Henrie the Seuenth had descended to Henrie the Eighth, so as he had the Remainder by Discent, yet might tenāt in taile, for the cause aforesaid, barre the estate taile by a common recouerie.

Sixthly, The word (Remainder) in the Statute is no vaine word, for the words of the Preamble be, The King hath giuen or granted, or otherwise prouided to his Seruants and Subiects. The word (Reuersion) in the body of the Act hath reference to these words (giuen or granted) and (Remainder) hath reference to these words (otherwise prouided.) As if the King in consideration of Money, or of assurance of Land, or for other consideration by way of prouision, procure a Subiect by Deed indented & inrolled, to make a gift in taile to one of his Seruants and Subiects for recompence of seruice, or other consideration, the Remainder to the King in fee, and all this appeare of Record; this is a good prouision within the Statute, and the Tenant in taile cannot by a common recouerie barre the estate taile. So it is, if the Remainder be limited to the King in taile: but if the Remainder bee limited to the King for yeares, or for life, that is no such Remainder, as it is intended by the Statute, because it is of no Remainder of continuance, as it ought to be, as it appeareth by the Preamble, and it ought to haue some affinitie with a Reuersion, wherewith it is ioyned.

Seuenthly, Where a common recouerie cannot barre the state taile by force of the said Statute, there a fine leuied in fee, in taile, for liues, or yeares, with Proclamations according to the Statutes, shall not barre the state taile, or the issue in taile where the Reuersion or Remainder

(b) 26. H. 8. 8. cap. 13. 33. H. 8. cap. 20. 5. E. 6. ca. 11. Stanf. Pl. Coron. 18.

(c) 12. E. 4. 19. Taltarums case.
(d) Vide deuant Sect. 690 Vid. lib. 3. fol. 5. Cuppledicks case, & fol. 94. 97. 106. Lib. 1. fol. 62. Capels case, Lib. 2. fol. 16. 52. 74. 77. Lib. 6. fol. 41. 32. Lib. 10. fol. 37. Marie Portingtons case.
(e) 38. H. 8. taile Br. 41 Pl. Com. fol. 555. 29. H. 8. Dier. 52.
(f) 34. H. 8. cap. 20.

(g) Trin. 23. Eliz. inter Diuely & Aiston resolued in the Court of Wards. Lib. 2 fol. 15, & 16. in Wisemans case.

Lib. 8. fol. 77, 78. The Lord Staffords case.

Lib. 2. fol. 15, 16. Wisemans case. Lib. 2. fol. 52. Cholmleyes case.

Lib. 2. fol. 16. Wisemans case.

mainder is in the King, as is aforesaid, by reason of these words in the said Act, (the said recouery or any other thing or things hereafter to be had, done, or suffered by or against any such Tenant in taile to the contrary notwithstanding) which words include a fine leuied by such a Donée, and restraineth the same.

So resolued Pasch 31. Eliz. Rot. 1645. in Nodins case in Communi Banco.

Eightly But where a common recouery shall barre the estate taile, notwithstanding that Statute, there a fine with Proclamations shall barre the same also.

Ninthly, Where the said latter words of the Statute be (had, done, or suffered by or against any such Tenant in taile) the sense and construction is, where Tenant in taile is partie or priuie to the Act, be it by doing or suffering that which should worke the barre, and not by meere permission, he being a stranger to the Act.

So holden Trin 39 Eliz. Rot. 1914. inter Stratford & Douer in Communi Banco.

As if Tenant in tayle of the gift of the King, the reuersion to the King expectant, is disseised, and the Disseisor leuie a fine, and fiue yeares passe, this shall barre the estate taile: and so if a collaterall Ancestour of the Donée release with Warrantie, and the Donée suffer the Warrantie to descend without any entry made in the life of the Ancestour, this shall binde the Tenant in tayle, because he is not party or priuie to any Act, either done or suffered by or against him.

Tenthly, Albeit the preamble of the Statute extend onely to gifts in taile made by the Kings of England before the Act (viz. hath giuen and granted, &c.) and the body of the Act referreth to the preamble (viz. that no such feined recouery hereafter to be had against such Tenant in taile) so as this word (such) may seeme to couple the body and the preamble together, yet in this case (such) shall be taken for such in equall mischiefe, or in like case, and by diuers parts of the Act it appeareth, that the makers of the Act intended to extend it to future gifts, and so is the Law taken at this day without question.

A recouery in a Writ of Right against Tenant in taile without a Voucher, is no barre of any gift in taile.

33. E. 3. iudgement 252. 3. H. 6. 55. 10. H. 6. 5. 14. E. 4. 5. b. 15. E. 4. 8. F. N. B. 134. b. Pl. Com. 237. 28. E. 3. 95. F. N. B. 28. l.

If tenant in taile the remainder ouer in fée cesse, and the Lord recouer in a Cessauit, this shall not barre the estate taile, for the issue shall recouer in a Formedon: neither were either of these barres when Littleton wrote. But let vs now heare Littleton.

Sect. 709.

ITem, si Tenant ẽ taile discõtinua l' tayle, & ad issue & deuy, & l' uncle del issue relessa al discontinuee oue Garrantie, &c. & mozust sans issue, ceo est collaterall Garranty al issue en taile pur ceo que le Garrantie discendist sur lissue, le quel ne poit soy conueyer a le taile per meane de son vncle.

ALso if tenant in taile discontinue the taile and hath issue and dieth, and the Vncle of the issue release to the Discontinuee with Warrantie, &c. and dieth without issue, this is a collaterall Warranty to the issue in tayle, because the Warranty descendeth vpon the issue, that cannot conuey himselfe to the entayle by meanes of his vncle.

THe reason wherefore the Warrantie of the Uncle hauing no right to the Land entailed shall barre the issue in tayle is, for that the Law presumeth that the Uncle would not vnnaturally disherit his lawfull heire being of his owne bloud, of that right which the Uncle neuer had, but came to the heire by another meane, vnlesse hee would leaue him greater aduancement. Nemo præsumitur alienam posteritatem suæ prætulisse. And in this case the Law will admit no proofe against that which the Law presumeth. And so it is of all other Collaterall Warranties, for no man is presumed to doe anything against nature.

P. Com. fol. 307. a in Sharingtons case

(k) And the like holdeth in

(k) 11. H. 4. 55. 10 Eliz. Dier. 271.

Then all such collateral warranties without assets are not naturall & lawfull that should be prohibited by law which is not nature

some other Cases as if a Rent be behinde for twentie yeares, and the Lord make an Acquittance for the last that is due, all the rest are presumed to be paid, and the Law will admit no proofe against this presumption. (l) So if a man be within the foure Seas, and his wife hath a childe, the Law presumeth that it is the childe of the husband, and against this presumption the Law will admit no proofe. vid. case of Thomas. Mich. 6. Jac. 2. ad bar Scot.

(l) 7. H. 4. 9.

(m) If a man that is innocent be accused of Felony, and for feare flieth for the same, albeit

(n) 3 E. 3. Corone Stanf.

beit he iudicially acquitteth himselfe of the Felonie, yet if it be found that he fled for the Felonie, he shall notwithstanding his innocencie forfeit all his Goods and Chattels, Debts and Duties, for as to the forfeiture of them the Law will admit no proofe against the presumption in Law grounded vpon his flight, and so in many other Cases. But yet the generall rule is, Quod stabitur præsumptioni donec probetur in contrarium. But as you see it hath many exceptions.

Reg: Bracton lib. 1. cap. 9

(n) It hath beene attempted in Parliament, that a Statute might be made, that no man should be barred by a Warrantie collaterall, but where Assets descend from the same Ancestor: but it neuer tooke effect, for that it should weaken common Assurances.

(n) Rot. Parliament. 50. E. 3. num. 77.

Sect. 710.

CAD *issue deux files.* If husband and wife, Tenants in especiall tayle, haue issue a daughter, and the wife die, the husband by a second wife hath issue another daughter, and discontinueth in fee and dieth, a collaterall ancestor of the daughters releaseth to the discontinuee with warranty and dieth, the warrantie descendeth vpō both daughters, yet the issue in taile shall be barred of the whole, for in iudgement of Law the entire Warrantie descendeth vpon both of them.

5. E. 2. Garr. 78. lib. 8. fol. 51 41. Syms Case.

CEt *leigne enter en lentiertie & ent fait vn feoffement, &c.* Here it is to bee vnderstood, that when one Coparcener doth generally enter into the whole, this doth not deuest the estate which descended by the Law to the other, vnlesse she that doth enter claimeth the whole, and taketh the profits of the whole, for that shall deuest the freehold in Law of the other Parcener.

See before in the Chapter of Discent. Sect. 398.

Otherwise it is after the Parceners be actually seised, the taking of the whole profits or any claime made by the one cannot put the other out of possession without an

CItem, si le tenant en tayle ad issue deux files & morust, & leigne entra en le entierty & ent fait vn feoffement en fee oue garrantie, &c. et puis leigne file morust sans issue, en cest cas le puisne file est barre quant al vn moitie, et quant al auter moitie el nest pas barre. Car quant a la moitie que affiert a le puisne file el est barre, pur ceo que quant a cel part el ne poit conueyer le discent per my le maine de son eigne soer et pur ceo quant a cel moitie, ceo est vn collateral Garrantie. Mes quant al auter moity que affiert a son eigne soer, le Garrantie nest pas barre a le puisne soer, pur ceo que el poit conueyer son discent, quant a cel moitie que affiert a son eigne soer per mesme le eigne soer, issint quant a cest moitie que affiert al eigne soer, le Garrantie

ALso if the Tenant in tayle hath issue two daughters and dieth, & the elder entreth into the whole, and thereof maketh a feoffement in fee with warrantie, &c. and after the elder daughter dieth without issue: In this case the youngerdaughteris barred as to the one moitie, and as to the other moitie she is not barred. For as to the moity which belongeth to the younger daughter, she is barred, because as to this part shee cannot conuey the discent by meanes of her elder sister, and therefore as to this moitie, this is a collateral Warrantie. But as to the other moitie, which belongeth to her elder sister, the warrantie is no bar to the younger sister because she may conuey her discent as to that moitie which belōgeth to her elder sister by the same elder sister, so as to this moitie which be-

tie eſt lineal al puiſne ſoer.

longeth to the elder ſiſter the warrãtie is lineall to the younger ſiſter.

Sect. 711.

¶ Et nota q̃ quant a celuy que demanda fee ſimple per aſcun de ſes auncеſters, il ſerra barre per Garrantie lineal que diſcendiſt ſur luy, ſinon que ſoit reſtraine per aſcun eſtatute.

And note that as to him that demandeth fee ſimple by any of his Anceſtors, he ſhall be barred by Warrantie lineall which deſcendeth vpon him, vnleſſe he be reſtrained by ſome Statute.

Sect. 712.

¶ Mes il q̃ demande fee taile per briefe de Formedonen diſcender, ne ſerra my barre p̃ lineal Garrantie, ſinon q̃ il ad Aſſets p̃ diſcent en fee ſimple per meſme launceſter q̃ fiſt le Garranty. Mes collateral Garrantie eſt barre a celuy q̃ demanda fee, & auxi a celuy que demanda fee taile ſans aſcun auter diſcent de fee ſimple, ſinon en caſes queux ſont reſtraines per les eſtatutes, et auters caſes pur certaine cauſes, come ſerra dit en apres.

But hee that demandeth Fee tayle by Writ of *Formedon* in *diſcender*, ſhall not bee barred by lineall Warrantie, vnleſſe hee hath Aſſets by diſcent in fee ſimple by the ſame Anceſtour that made the Warrantie. But collaterall Warrantie is a barre to him that demandeth fee, and alſo to him that demandeth fee Tayle without any other diſcent of fee ſimple, except in caſes which are reſtrained by the Statutes, and in other caſes for certaine cauſes, as ſhall be ſaid hereafter.

actuall putting out or diſſeiſin. And in this caſe of Littleton, when one Copartcener entreth into the whole, and maketh a feoffement of the whole, this deueſteth the freehold in Law out of the other Copartcener.

Now ſeeing the entrie in this caſe of Littletons deueſted not the eſtate of the other Parcener, if no further proceeding had beene, then it is to be demanded, that ſeeing the feoffement doth worke the wrong, and bee the wrong either a diſſeiſin, or in nature of an abatement, how can the Warrantie annexed to that feoffement that wrought the wrong be collaterall or binde the youngeſt ſiſter for her part? To this it is anſwered that when the one ſiſter entreth into the whole, the poſſeſſion being void, and maketh a feoffement in fee this Act ſubſequent doth ſo explaine the entry precedent into the whole, that now by conſtruction of Law, ſhe was only ſeiſed of the whole, and this feoffement can bee no diſſeiſin, becauſe the other ſiſter was neuer ſeiſed, nor any abatement, becauſe they both made but one heire to the Anceſtour, and one Freehold and Inheritance deſcended to them. So as in iudgement of Law the Warrantie doth not commence by diſſeiſin or by abatement, and without queſtion her entrie was no intruſion. Pl. Com. 543.

Tenant in tayle hath iſſue two daughters, and diſcontinueth in fee, the youngeſt diſſeiſeth the diſcontinuee to the vſe of her ſelfe and her ſiſter, the Diſcontinuee ouſteth her, againſt whom ſhe recouereth in an Aſſiſe, the eldeſt agreeth to the Diſſeiſin, as ſhe may, againſt her ſiſter, and become Joyntenant with her. And thus is the Booke in the 21. Aſſiſe (n) to be intended, the caſe being no other in effect, but A. diſſeiſeth one to the vſe of himſelfe and B, B. agreeth, by this he is Joyntenant with A. (n) 21. Aſſ. p. 19.

3.E.3.22.4.E.3.28.50.
6.E.3.56.7.E.3.54,57.
9.E.3.16.10.E.3.14.
15.E.3.Gar.27.20.E.3.
Ibid.29.25.E.3.50.20.
E.3.83.41.E.4.Garr.16.
Mich.38.E.3.Coram Rege Abbot de Colchesters case.45.Ass.6.Pl.Com. 554.19.E.1.10.
Vid.Sect.703.747.

1. Not without judgm. ea Formder. Rep.16.fo: 38. Mo96.239 Rhe.375 5.9.3.57/10.R.96/2 Hu335 1 Cro 156

Fleta lib.2,ca.65.Britton. 185.4.E.3.Gar.63.16. E.3.Ass.4.43.E.3.97.H. 6.3.11.H.4.20.

24.E.3.47.

(a) 31.E.3.Ass.5.13.E. 3.Recovery in value 17. Lib.3.fol.31.Butler & Bakers case.

(b) 14.E.3.Mesne 7.Registrum 293.

(c) Fleta lib, 2.cap.65. Britton fol.185 Extent. manerii, 5.H.7.37.32.H. 6.21,33.E.3,Gar.102.

¶ *Et nota que quant a celuy que demanda fee simple, &c.* In these two Sections there are expressed foure legall conclusions:

First, That a lineall warrantie doth binde the right of a Fee simple.

Secondly, That a lineall warrantie doth not binde the right of an Estate taile, for that it is restrained by the statute of Donis conditionalibus.

Thirdly, That a lineall Warrantie and Assets is a barre of the right in taile, and is not restrained (as hath bée ne said) by the said Act.

Fourthly, That a Collaterall Warrantie made by a Collaterall Ancestor of the Donée, doth binde the right of an estate taile, albeit there be no Assets, and the reason thereof is vpon the Statute of Donis conditionalibus, for that it is not made by the tenant in taile, &c. as the lineall Warrantie is.

To this may be added, that the Warranty of the Donée in taile, which is collaterall to the Donor, or to him in remainder, being heire to him doth binde them without any Assets. For though the alienation of the Donee after issue doth not barre the Donor, which was the mischiefe prouided for by the Act, yet the Warranty being collaterall doth barre both of them, for the Act restraineth not that warranty, but it remaineth at the Common Law, as Littleton after saith: and in like manner the Warranty of the Donee doth barre him in the remainder.

¶ *Assets.* (id est) quod tantundem valet, sufficient by discent.

Note Assets requisite to make a lineall warranty a barre must haue six qualities. First, it must be Assets (that is) of equall value, or more at the time of the Discent. Secondly, it must be of discent, and not by purchase or gift. Thirdly, as Littleton here saith, it must be Assets in fée simple, and not in taile, or for another mans life. Fourthly, it must descend to him as heire to the same Ancestor that made the Warranty, as Littleton also here saith. Fifthly, it must be of lands or tenements, or rents, or seruices valuable, or other profits issuing out of Lands, or tenements, and not personall inheritances, as Annuities, and the like. Sixthly, it must be in state or interest, and not in vse or right of actions or rights of entry, for they are no Assets vntill they be brought into possession. (a) But if a rent in fee simple issuing out of the land of the heire descend vnto him whereby it is extinct, yet this is Assets, and to this purpose hath in iudgement of Law a continuance.

(b) A Seigniory in fée almoigne is no assets, because it is not valuable, and therefore not to be extended, and so it seemeth of a Seigniory of Homage and fealty. But an aduowson is assets, whereof (c) Fleta saith; Item de Ecclesiis quæ ad donationem domini pertinent quot sunt, & quæ, & vbi, & quantum valeat quælibet Ecclesia per annum secundum veram ipsius æstimationem, & pro marca solidus extendatur, vt si Ecclesia centum marcas valeat per annum, ad centum solidos extendatur advocatio per annum. And herewith agreeth Britton, and others haue reckoned a shilling in the pound, and Britton adderh further, Mes si la advowson duist estre vendue, adonques serr' le reasonable price solonque le value en vn an a cel extent, wherein it is to be obserued, that antiquitie did euer reckon by marks.

Sect. 713.

¶ Item, si terre soit done a vn home et a les heires de son corps engendres le quel prent feme, et ont issue fits enter eux, & le baron discontinua le taile en fee, et deuy, & puis la feme relessa al discontinuee en fee oue garrantie, &c. et mourust, et le garrantie discendist a le fits, ceo est vn collateral garrantie.

ALso if land be given to a man and to the heires of his bodie begotten, who taketh wife, & haue issue a son betweene them, and the husband discontinues the taile in fee and dieth, & after the wife releaseth to the Discontinuee in fee with Warrantie, &c. and dieth, & the Warranty descends to the son, this is a collaterall Warrantie.

¶ This case standeth vpon the same reason that diuers other formerly put by our Author, doe viz. that because the heire claimeth only from the father Per formam doni, and nothing from the wife, that therefore the Warrantie of the wife is collaterall, and the warrantie made by any Ancestor male or female of the wife bindeth, and here the Warrantie descended after the discent of the right.

Sect.

Sect. 714.

¶ MEs si Tenements soyent dones a le baron & a sa feme, & a les Heires de lour deux corps engendres, queux ont issue fits, & le baron discontinua le taile & morust, & puis la Feme relessa oue Garrantie & morust, ceest Garrantie nest forsque vn lineal Garrantie a le fits: Car le fits ne serra barre en ceo cas de suer son brē de Formedon, sinon que il ad assets per discent en Fee simple per sa mere, pur ceo que lour issue en Briefe de Formedon couient conueyer a luy le droit come Heire a son pere & a sa mere de lour deux corps engendres, per forme del done, & issint en tiel case, le Garrantie de le Pere, & le Garrantie de la Mere ne sont forsque lineal Garr̄ al heire, &c.

BVt if Lands be giuen to the husband & wife, and to the heires of their two bodies begotten, who haue issue a son, and the husband discontinue the taile and dieth, and after the wife release with warrantie & dieth, this warrantie is but a lineall warrātie to the son: For the sonne shal not be barred in this case to sue his Writ of *Formedon*, vnlesse that hee hath Assets by discent in Fee simple by his mother, becausse their issue in the writ of *Formedon* ought to conuey to him the right as heire to his father & mother of their two bodies begotten *Per formam doni*, and so in this case the Warrantie of the father and the Warrantie of the mother are but lineall warrantie to the heire, &c.

¶ HEre is a point worthie of obseruation, that albeit in this case the issue in Taile must claime as heire of both their bodies, yet the Warrantie of either of them is lineall to the issue, and yet the issue cannot claime as heire to either of them alone, but of both: If lands be giuen to a man and to a woman unmarried, and the heires of their two bodies, and they entermarrie, and are disseised, and the husband release with warrantie, the wife dieth, the husband dieth, albeit the Donees did take by moities, yet the Warrantie is lineall for the whole, because as our Author here saith, the issue must in a Formedon conuey to him the right as heire to his father and his mother of their two bodies engendred, and therefore it is collaterall for no part. 35. E. 3. tit. Gar. 73.

Sect. 715.

¶ ET nota que en chescun cas ou home demanda tenements en Fee taile per Briefe de Formedon, si ascun del issue en le Taile que auoit possession ou que nauoit ascun possession fait vn Garrantie, &c. si celuy que suist le Briefe de Formedon puissoit p ascun possibilitie per matter que puissoit estre en fait, conueyer a luy per my celuy que fist le Garrantie

AND note that in euerie case where a man demādeth lands in Fee taile by Writ of *Formedon* if any of the issue in Taile that hath possessiō, or that hath not possession make a Warrantie, &c. if hee which sueth the Writ of *Formedon* might by any possibilitie by matter which might bee in fait, conuey to him, by him that made the warrantie *Per formam doni*, this is a li-

rantie per forme del done, ceo eſt vn lineal Garr̃, & nēy collateral.

neall Warrantie and not collaterall.

35. E. 3. Gar. 73.

¶ Of this ſufficient hath beene ſaid before, Sed nunquàm nimis dicitur quod nunquàm ſatis dicitur, for it is a point of great vſe and conſequence.

Sect. 716, 717.

¶ Item, ſi home ad iſſue trois fits, & il dona Terre al eigne fits, a auer & tener a luy & a les Heires de ſon corps engendres, & pur default de tiel Iſſue, le remainder al mulnes fits, a luy, & a les Heires de ſon corps engendres, & pur default d̄ tiel iſſue del mulnes, le remainder al puiſne fits & les heires de ſon corps engendres, en ceſt cas ſi leigne diſcontinua le Tayle en fee, & oblige luy & ſes Heires a Garrantie, & morust ſans Iſſue, ceo eſt vn collateral Garrantie al mulnes fits, & ſerra barre a demaunder meſme la Terre per force del remainder, pur ceo que le remainder eſt ſon title, & ſon eigne frere eſt collateral a cel title, que commence per force del remainder. En meſme le maner eſt, ſi le mulnes fits auoit meſme la Terre per force del remainder, pur ceo que ſon eigne frere ne fiſt aſcun diſcontinuance, mes morust ſans iſſue de ſon corps & puis le mulnes fait vn diſcontinuance oue Garrantie, &c. & morust ſans iſſue, ceo eſt vn collateral Garrantie a le puiſne fits. Et auxy en ceſt caſe ſi aſcun de les dits fits ſoit diſſeiſie, & le pere que fiſt le done, &c. releſſa a le Diſſeiſor tout ſon droit oue Garrantie, ceo eſt vn collateral Garrantie a celuy fits ſur que le Garrantie diſcendiſt, Cauſa qua ſupra.

ALſo if a man hath Iſſue three ſonnes & giueth land to the eldeſt ſonne, to haue & to hold to him & to the Heires of his bodie begotten, and for default of ſuch iſſue, the remainder to the middle ſonne, to him and to the Heires of his bodie begotten, and for default of ſuch iſſue of the middle ſonne, the remainder to the youngeſt Son and to the Heires of his bodie begotten; In this caſe, if the eldeſt diſcontinue the taile in fee, & binde him & his Heires to Warrantie, & dieth without iſſue, this is a collaterall warrantie to the middle ſon, & ſhal be a bar to demand the ſame land by force of the Rem̃, for that the remainder is his Title, and his elder brother is collaterall to this Title, which commenceth by force of the remainder. In the ſame manner it is, if the middle ſon hath the ſame Land by force of the Remainder, becauſe his eldeſt brother made no diſcontinuance, but died without Iſſue of his bodie, & after the middle make a diſcontinuance with Warrantie, &c. & dieth without iſſue, this is a collaterall Warrātie to the youngeſt ſon. And alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the Father that made the gift, &c. releaſeth to the Diſſeiſor all his right with warrantie, this is a collaterall warrātie to that Son vpon whom the warrantie deſcendeth, *Cauſa qua ſupra.*

Sect.

Sect. 717.

CEt sic Nota, Que lou home que est collaterall a le Title, & ceo release oue Garrantie, &c. ceo est vn Collaterall Garrantie.

And so Note, That where a Man that is collaterall to the Title, and releaseth this with Warrantie, &c. this is a collaterall Warrantie.

CHere it appeareth, That it is not adiudged in Law a Collaterall Warrantie, in respect of the bloud, for the Warrantie may be collaterall, albeit the bloud bee lineall, & the Warrantie may be lineall, albeit, the bloud be collaterall, as hath beene said. But it is in Law deemed a Collaterall Warrantie, in respect that he that maketh the Warrantie is collaterall to the title of him upon whom the Warrantie doth fall, as by the example which Littleton here putteth, and by that which hath beene formerly said, is manifest. 8.*R.*2.Gar.101.V.Sect. 704.

Sect. 718.

CItem, si Pier dona Terre a son eigne fits, a auer & ten̄ a luy, & a les hēz Males ō son corps engendrez, le Remainder a le second fits; &c. si leigne fits alienast en fee oueqz Garrantie, &c. & ad issue female, & morust sans issue male, ceo nest pas collaterall Garrantie al second fits, car il ne serra barre de ꝑ action de Formedon en l' remainder, pur ceo que le Garrantie discendist al file ōl eigne fits, & nemy al second fits. Car chescun Garrantie que discendist, discendist a celuy que est heire a luy que fist le Garrantie per le Common Ley.

Also if a father giueth land to his eldest son, to haue and to hold to him and to the heires males of his body begotten, the remainder to the secōd sonne, &c. if the eldest sonne alieneth in fee with warranty, &c. & hath issue female, and dieth without issue male, this is no collaterall warranty to the secōd son, for he shall not bee barred of his actiō of *Formedō* in the remainder, because the warranty descended to the daughter of the elder son, and not to the second sonne: for euery Warrantie which descends, descendeth to him that is heire to him who made the Warrantie by the Cōmon Law.

CHere is rehearsed a maxime of the Common Law, that euery Warrantie doth descend vpon him that is heire to him that made the Warrantie, by the common Law, as by this example it appeareth. Vid. Sect.3.603.735. 736,737.

Max.

C*A celuy que est heire a luy que fist le Garrantie per le Cōmon ley, &c.* Hereupon many things worthy to be knowne are to be vnderstood.

(a) First, That if a man infeoffeth another of an acre of ground with warrantie, and hath issue two sons, and dieth seised of another acre of land, of the nature of Burrough English, the feoffee is impleaded, albeit the Warrantie descendeth onely upon the eldest sonne, yet may he vouch them both: the one as heire to the Warrantie, and the other as heire to the lād: for if he should vouch the eldest son onely, then should he not haue the fruit of his Warranty, viz. a recouerie in value. the youngest son only he cannot vouch, because he is not heire at the common Law, vpon whom the warrantie descendeth. (a)40.E.3.14.

(b) So it is of Heires in Gauelkind, the eldest may be vouched as heire to the warranty (b)22.E.4.10.4.E.3.55. 27.H.6.1.2.11.E.3. Dct. 7.

(c) 49. Ass. 4. 38. E. 3. 22

ranty, and the other sonnes in respect of the inheritance discended vnto them. (c) And in like sort, the Heire at the Common Law, and the Heire of the part of the mother shall bee vouched. But the Heire at the Common Law may be vouched alone in both these cases, at the election of the Tenant, & sic de similibus. (d) In the same mãner if a man dieth seised of certaine lands in fee, hauing issue a sonne and a daughter by one Venter, and a sonne by another, the eldest sonne entreth and dieth, the land descends to the Sister: In this case the Warrantie descendeth on the sonne, and he may be vouched as Heire, and the Sister, as Heire of the Land: In which & the other case of Burrough English, the sonne and heire by the Common Law hauing nothing by discent, the whole losse of the recouerie in value lieth vpon the Heirrs of the Land, albeit they be no Heires to the Warrantie. Then put the case that there is a Warrantie Paramount, Who shall deraigne that Warrantie? and to whom shall the recompence in value goe? Some haue said, That as they are vouched together, so shall they auouch ouer, and that the recompence in value shall enure according to the losse, and that the effect must pursue the cause, as a recouerie in value by a Warrantie of the part of the mother shall goe to the Heire of the part of the mother, &c.

(d) 32. E. 3. Vouch. 94. 35. H. 6. 33.

Pl. Com. 515.

Some others hold, That it is against the Maxime of Law, that they that are not heires to the Warrantie should ioyne in Voucher, or to take benefit of the Warrantie which descended not to them, but that the Heire at the Common Law, to whom the Warrantie descended, shall deraigne the Warrantie, and recouer in value, and that this doth stand with the rule of the Common Law.

Max:

Others hold the contrarie, and that this should be both against the rule of Law, & against reason also. for by the rule of Law (e) the Vouchee shall neuer sue to haue execution in value, vntill execution be sued against him. But in this case Execution can neuer be sued against the Heire at the Common Law, therefore he cannot sue to haue execution ouer in value. Secondly, It should be against reason, that the Heire at the Common Law should haue totum lucrum, and the speciall Heires totum damnum. I finde in our Bookes, (f) that this reason is yeelded, that the speciall Heire should not be vouched only: For (say they) if the speciall Heires should be vouched only, then could not they deraigne the Warrantie ouer, which should bee mischieuous, that they should lose the benefit of the Warrantie, if they should be vouched only. But if the Heire at the Common Law were vouched with them, (as by the Law he ought) all might be saued, and therefore studie well this point how it may be done.

Reg:

(e) 17. E. 2. tit. Recouer in value 33. 1. E. 3. 12. 33. E. 3. Iudgm. 222. 14. E. 3. ibid. 160. 10. E. 3. 52. 18. E. 3. 51. Lib. 1. fol. 96. Shelleyes case.

(f) 32. E. 3. Vouch. 94. per Greene.

(g) If Tenant in generall Taile be, and a common recouerie is had against him and his wife, where his wife hath nothing, and they vouch, and haue iudgement to recouer in value, Tenant in Taile dieth, and the wife suruiueth: for that the Issue in Taile had the whole losse, the recompence shall enure wholly to him, and the wife, albeit she was partie to the iudgement, shall haue nothing in the recompence, for that she loseth nothing.

(g) Vide Pl. Com. fol. 514.

(h) If the Bastard eigne enter and take the profits, he shall be vouched only, and not the Bastard & the Mulier, because the Bastard is in apparence heire, & shall not disable himselfe.

(h) 17. E. 3. 59. 20. E. 3. Vouch. 129. 32. E. 3. Vouch. 94. 5. H. 7. 2.

(i) If a man be seised of Lands in Gauelkinde, & hath issue three sonnes, and by Obligation bindeth himself and his heires and dieth, an action of Debt shall be maintainable against all the three sonnes, for the Heire is not chargeable vnlesse he hath lands by discent,

(i) 11. H. 7. 12. 11. E. 3. tit. Det. 7. Dy. 5. El. 238.

(k) So if a man be seised of Land on the part of his mother, and binde himself & his heires by Obligation, and dieth, an action of Debt shall lie against the Heire on the part of the mother, without naming of the Heire at the Common Law. And so note a diuersitie betweene a personall lien of a Bond, and a reall lien of a Warrantie.

(k) 11. H. 7. 12.

Sect. 719.

(l) 24. E. 3. 36. 27. E. 3. page 108. 38. E. 3. 26. 40. E. 3. 5. 37. H. 8. Br. Nosme. 1. & 40. & tit. Done & Rem. 61.

THere it appeareth, That (l) whensoeuer the ancestor taketh any estate of Freehold, a limitation after in the same Conueyance to any of his heires, are words of limitation, and not of purchase, albeit in words it be limited by way of remainder: and therefore here the remainder, to the heires Females vesteth in the Tenant in Taile himselfe,

CNota, si fre soit done a vn home, & a les heires males de son corps engendrez, & pur default de tiel Issue, le Rem̃ent a ses heirez females de son corps engendrez, & puis le donee

Note, if Land bee giuen to a man & to the heires males of his body begotten, and for default of such Issue the Remainder thereof to his Heires females of his body begotten, and after the

donee en le taile fait feoffment en fee ouesque Garrantie accordant, & ad issue fits & file & mozust, cel Garrantie nest forsque lineall Garrantie a le fits a demaunder per briefe de Formedon en le discender, & auxy il nest forsque lineall a le file, a demander mesme la terre per briefe de Formedon en le remainder, sinon frere deuiast sans issue male, pur ceo que el claime come heire female de le corps son pere engendrez. Mes en cest cas, si son frere en sa vie releasast al discontinuee, &c. oue garrantie, &c. & puis mozust launs issue, ceo est vn collaterall garrantie a le file, pur ceo que el ne puit conueyer a luy le droit que el ad per force de le remaynder per ascun meane de discent per son frere, pur ceo que le frere est collateral a le title sa soer, & pur ceo son Garrantie est collateral, &c.

donee in tayle maketh a Feoffement in fee, with Warrantie accordingly and hath issue a son and a daughter and dieth, this warrantie is but a lineall warrantie to the sonne to demand by a Writ of *Formedon* in the discender, and also it is but lineall to the daughter to demand the same Land by Writ of *Formedon*, in the remainder, vnlesse the brother dieth without issue male, because shee claimeth as heire female of the bodie of her father ingendred. But in this case, if her brother in his life release to the discontinuee, &c. with Warrantie, &c. and after dieth without issue this is a collaterall warrãty to the daughter, because shee cannot conuey to her the right which shee hath by force of the remainder by any meanes of discent by her brother, for that the brother is collateral to the title of his sister, and therefore his warranty is collaterall, &c.

knowne, that for Learning sake, & to find out the reason of the Law, these limitations to the heires males of the bodie, and after to the heires females of the body may bee put, but it is dangerous to vse them in conueyãces, for great inconueniences may arise thereupon, for if such a Tenant in taile hath issue diuers sons, and they haue issue diuers daughters, & likewise if Tenant in taile hath issue diuers daughters, and each of them hath issue sonnes, none of the daughters of the sons, nor the sonnes of the daughters shall euer inherite to either of the said estates tayle: and so it is of the Issues of the Issues, for that (as hath beene said) the Issues inheritable must make their claime either onely by Males, or onely by Females, so as the females of the females, or males of the Females are wholly excluded to bee inheritable to either of the said Estates tayle: but where the first limitation is to the hẽs males, let the limitation be, for default of such issue to the heirs of the body of the Donee, & then all the Issues, be they Females of Males, or Males of Females are inheritable.

1 H.6.4. 11.H.6.13. 14. 28.H.6. Deuise 18. Statham. Deuise. Pl. Com. 414. 20.H.6.43. Vid. Litt. e. taile, Sect. 24. 37.H.8. Br. done & rem. 61. & tit. nosme 1. & 40.

If a man giue Lands to a man, to haue and to hold to him and the heires Males of his body, and to him and to the heires Females of his bodie, the estate to the heires Females is in remaynder, and the daughters shall not inherite any part, so long as there is Issue Male, for the estate to the heires Males is first limited, and shall be first serued, and it is as much to say, & after to the heires Females, and Males in construction of Law are to bee preferred.

Sect.

Sect. 720.

ITem, ies ay oye dire que en temps le Roy Richard le ſecond, il y fuyt vn Juſtice del Common Banke, demurrant en Kent, appel Richel, que auoit iſſue diuers fits, & ſon entent fuit, que ſon eigne fits aueroit certaine terres & tenements a luy, & a les heires de ſon corps engendrez, et pur default diſſue, le remainder a le ſecond fits, &c. et iſſint a l' tierce fits, &c. et pur ceo q̃ il voile que nul de ſes fits alieneroit, ou ferroit garrantie pur barrer ou leder les auters, q̃ur ſerront en le remainder, &c. il fiſt faire tiel Indentur̃, a tiel effect, ceſt aſcauoir, que les terres et tenements fueront donez a ſon eigñ fits ſur tiel condition que ſi leigñ fits aliena en fee, ou en fee taile, &c. ou ſi aſcun de ſes fits alienaſt, &c. que adonqz lour eſtate ceſſera, & ſerroit void, & que adonqz meſmes les terr̃s & tenements immediat remaindront a le ſecond fits, & a l'g Heires ô ſon corps engēdrez, & ſic vltra, l' remainder as auters de ſes fits, et liuery de ſeiſin fuit fait accordant.

ALſo I haue heard ſay, that in the time of King *Richard* the ſecond, there was a Iuſtice of the Common Place dwelling in *Kent*, called *Richel*, who had iſſue diuers ſonnes, and his intent was that his eldeſt ſonne ſhould haue certaine Lands & Tenements to him & to the heires of his bodie begotten, & for default of iſſue, the remainder to the ſecond ſonne, &c. & ſo to the third ſonne, &c. & becauſe he would that none of his ſons ſhould alien or make Warrātie to bar or hurt the others that ſhould be in the remainder, &c. he cauſeth an indenture to bee made to this effect, *viz.* That the Lands & Tenements were giuen to his eldeſt ſon vpon ſuch cōdition that if the eldeſt ſon aliē in fee or in fee taile, &c. or if any of his ſons alien, &c. that then their eſtate ſhould ceaſe and be void, & that then the ſame Lands & Tenements immediately ſhould remain to the ſecond ſon, and to the heires of his body begotten, *& ſic vltra*, the remainder to his other ſonnes, and liuery of ſeiſin was made accordingly.

21. H. 6. f. 33. l. 6. f. 42. b. Sir Anthony Mildmayes caſe.

CIeo ay oye dire, *&c.* Thoſe things that one hath by credible hearſay, by the example of our Author are worthy of obſeruation. This inuention deuiſed by Juſtice Richel in the reigne of King Richard the ſecond, who was an Iriſhman borne, and the like by Thirning Chiefe Juſtice in the reigne of Henry the fourth, were both full of imperfections, for Nihil ſimul iuuentum eſt & perfectum, and Sæpe viatorem noua non vetus orbita fallit. And therefore new inuentions in Aſſurances are dangerous. And hereby it may appeare, that it is not ſafe for any man (bee he neuer ſo learned) to be of counſell with himſelfe in his owne caſe, but to take aduice of other great and learned men.

Non proſunt Dominis quæ proſunt omnibus, artes.

And the reaſon hereof is, in ſuo quiſque negotio hebetior eſt, quàm in alieno.

(m) 2. H. 4. fol. 11 in Action ſur le caſe.

(m) And the ſame Iudge in his owne name, &c. brought an Action vpon his caſe againſt others, and obtained a verdict, ſo as the right of the cauſe was tried on his ſide, yet for that vpon his owne ſhewing in his Count the action did not lye, Ex aſſenſu omnium Juſticiariorum præter quærentem Richel, iudgement was giuen againſt him, but let vs now leaue this Iudge for example to others, and let vs returne to our author.

Sect.

Sect. 721.

CMes il semble per reason, que touts tiels remainders en la forme auantdit sont voides & de nul value, & ceo pur trois causes. Un cause est, pur ceo que chescun remainder q̄ commence p̄ vn fait, il couient que le remainder soit en luy a que l' remainder est tayle per force de mesme le fait, auant liuerie de seisin est fait a luy que auera le franktenement, car en tiel case le nessance & le estre de le remainder est per le liuery de seisin a celuy q̄ auera l' franktenement; & tiel remainder ne fuit al second fits, al temps de liuery de seisin en l' cas auantdit, &c.

BUt it seemeth by reason that all such remainders in the forme aforesaid are void and of no value, and that for three causes. One cause is, for that euery remainder which beginneth by a Deed, it behoueth that the rem̄ be in him to whom the remainder is entailed by force of the same Deed, before the liuery of seisin is made to him which shall haue the freehold, for in such case the growing and the being of the remainder is by the liuery of seisin to him that shall haue the freehold, and such remainder was not to the second sonne at the time of the liuery of seisin in the case aforesaid, &c.

CHere our Authours is of opinion, that these Remainders in the forme aforesaid, are void and of no value for three causes.

C *Vn cause est, &c.* Here hee setteth downe a rule concerning Remainders, viz. Euery remainder which cōmenceth by a Deed ought to vest in him to whom it is limited, when Liuery of seisin is made to him that hath the particular estate.

First, Littleton saith by Deed, (n) because if Lands bee granted and rendred by Fine for life, the remainder in taile, the remainder in fee, none of these remainders are in them in the remainder vntill the particular estate bee executed.

(n) 7.R. 2. Scire fac.

Secondly, that the remainder bee in him, &c. at the time of the Liuery. This is regularly true, but yet it hath diuers exceptions. First, vnlesse the person that is to take the remainder be not in rerum natura, (o) as if a Lease for life bee made, the remainder to the right heires of I. S. I. S. being then aliue, it sufficeth that the inheritance passeth presently out of the Lessour, but cannot vest in the heire of I. S. for that liuing his father he is not in rerum natura, for non est hæres viuentis, so as the remainder is good vpon this Contingent, viz. if I. S. die during the life of the Lessee.

(o) 32.H.6.tit. Feoffm. & faits, 99. 27.E.3.87. 11.R.2. Detinue, 46. 2.H.7.13. 12.H.7.27. 12.E.4.2. 21.H.7.11. 7.H.4.23. 11.H.4.74. 18.H.8.3. 27.H.8.42. 38.E.3.26. 30. Ass. 47. 6.R.2. qu. Iur. dam. 20.

(p) And so it is if a man make a Lease for life to A. B. and C. and if B. suruiue C. then the remainder to B, and his heires. Here is another exception out of the said rule, for albeit the person be certaine, yet inasmuch as it depends vpon the dying of B. before C. the remainder cannot vest in C. presently. And the reason of both these cases in effect is, because the remainder is to commence vpon limitation of time, viz. vpon the possibilitie of the death of one man before another, which is a common possibilitie.

(p) Pl.Com in Colthirsts case, fol.25.26.

A man letteth Lands for life vpon condition to haue fee, and warranteth the Land in forma prædicta, afterward the Lessee performeth the Condition, whereby the Lessee hath fee, the warranty shall extend and increase according to the state. And so it is in that case if the Lessor had died before the performance of the Condition, the warrantie shall rise and increase according to the estate, & yet the Lessor himselfe was neuer bound to the warrantie, but it hath relation from the first Liuery. And by this it appeareth that a warranty being a Couenant reall executory may extend to an estate in futuro, hauing an estate, whereupon it may worke in the beginning. But if a man grant a Seigniorie for yeares vpon Condition to haue fee with a warranty

Warranty in forma prædicta, & after the Condition is performed, this shall not extend to the fee, because the first estate was but for yeares, which was not capable of a Warranty. And so it is, if a man make a Lease for yeares, the remainder in fee, and warrant the Land in forma prædicta, he in the remainder cannot take benefit of the warranty, because he is not partie to the Deed, and immediately he cannot take, if he were partie to the Deed, because he is named after the Habendum, and the estate for yeares is not capable of a warrantie. And so it is if Land be given to A. and B. so long as they joyntly together liue, the remainder to the right heires of him that dieth first, and warrant the Land in forma prædicta. A. dieth, his heire shall haue the warrantie, and yet the remainder vested not during the life of A. for the death of A. must precede the remainder, and yet shall the heire of A. haue the Land by discent.

Sect. 722.

¶ *Si le primer fits alienast, &c.* By the alienation of the Donee two things are wrought:

First, the Franktenement and fee is in the alienee.

Secondly, the Reuersion is deuested out of the Donor. (q) And therefore by the alienation that transferreth the freehold and fee simple to the alienee there can no tem bee raised and vested in the second sonne (r) As if a man make a Lease for life vpon Condition that if the Lessor grant ouer the Reuersion, that then the Lessee shall haue fee, if the Lessor grant the Reuersion by Fine, the Lessee shall not haue fee, for when the Fine transferreth the fee to the Conusee, it should bee absurd, and repugnant to reason, that the same Fine should worke an estate in the Lessee, for one alienation cannot vest an estate of one and the same Land to two seuerall persons at one time.

In a mans owne grant, which is euer taken most forcibly against himselfe, the reason of Littleton doth hold, for it hath beene resolued by the Iustices (s) that if a man seised of an Aduowson in fee by his deed granteth the next presentation to A. and before the Church becommeth void, by another Deed grant the next presentation of the same Church to B. the second grant is void, for A. hath the same granted to him before, and the Grantee shall not haue the second auoydance by construction, to haue the next auoydance, which the Grantor might lawfully grant, for the grant of the next auoydance doe not import the second presentation; (t) But if a man seised of an aduow-

(q) 21.H.7.11. 27.H.8. 24.

(r) 6.R.2. quid juris. clam. 20.

Argumentum ex absurdo.

(s) 20. H. Presentments al Eglise. Br. 52. 33.H.8. ibid. 55. 29.H.8.Dy.35. 11.El.282.283.

(t) 15.H.7.7. 19.E.3. quar. Imp. 154.

¶ Le second cause est, si le primer fits alienast les tenements en fee, adonqs est le franktenement, & le fee simple en lalienee, & en nul auter, & si le donour auoit ascun reuersion, per tiel alienation l'reuersion est discontinue, donques coment per ascun reason poit ceo estre, que tiel rem̃ commencera son estr̃, & son nessance immediate apres tiel alienation fait a vn estrange, que ad p̃ mesme. lalienation franktenement, & fee simple, &c. Et auxy si tiel remaindr̃ serroit bone, adonques purroit il enter sur lalienee, lou il nauoit ascun manner ŏ droit auant lalienation, que serra inconuenient.

THe second cause is, if the first sonne alien the Tenements in fee, then is the freehold and the fee simple in the Alienee, & in none other, and if the Donor had any Reuersion, by such alienation the Reuersion is discontinued, then how by any reason may it be, that such remainder shall commence his being and his growing immediately after such alienation made to a stranger, that hath by the same alienation a freehold and fee simple, &c. And also if such remainder should bee good, then might he enter vpon the Alienee, where hee had no manner of right before the alienation, which should bee inconuenient.

ſon in fée take wife, now by act in Law is the wife intitled to the third preſentation, if the huſband die before: the huſbād grant the third preſentation to another, the huſband die, the heire ſhall preſent twice, the wife ſhall haue the third preſentation, and the Grantée the fourth, for in this caſe it ſhall be taken the third preſentation, which he might lawfully grāt, and ſo note a diuerſitie betweene a title by act in Law, and by act of the partie, for the act in Law ſhall worke no preiudice to the Grantée.

¶ *Auxi ſi tiel remainder ſerroit bone, &c.* The force of this argument is, that ſeeing the eſtate of the Alienée (albeit the words of the Condition be, that the ſtate ſhould ceaſe and be void) being an eſtate of inheritance in lands or tenements cannot ceaſe or bee void before the eſtate be defeated by entrie, then if this remainder ſhould be good, then muſt it giue an entrie vpon the Alienée to him that had no right before, which ſhould be againſt the expreſſe rule of Law, viz. that an entrie cannot be giuen to a ſtranger to auoid a voydable act, as before hath beene ſaid in the Chapter of Conditions.

¶ *Le quel ſerr' enconuenient.* Here note three things. Firſt, that whatſoeuer is againſt the rule of Law is inconuenient. Secondly, that an argument Ab inconuenienti is ſtrong to proue it is againſt Law, as often hath beene obſerued. Thirdly, that new inuentions (though of a learned Iudge in his owne profeſſion) are full of inconuenience, Periculoſum eſt res nouas & inuſitatas inducere. Vide Sect. 87. &c.

Eventus varios res noua ſemper habet.

Sect. 723.

¶ A tierce cauſe eſt, quant la condition eſt tiel, que ſi leigne fits alienaſt, &c. que ſon eſtate ceſſera ou ſerroit void, &c. donqes apres tiel alienation, &c. poit le donor enter per force de tiel condition, coñ il ſemble, & iſſint le Donor ou ſes heires en tiel caſe doyent pluis toſt auer la fre que le ſecond fits, que nauoit aſcun droit deuant tiel alienation, & iſſint il ſemble que tiels remainders en le cas auantdit ſont voides.

THe third cauſe is, when the condition is ſuch, that if the elder ſonne alien, &c. that his eſtate ſhall ceaſe or bee void, &c. then after ſuch alienation, &c. may the Donor enter by force of ſuch condition, as it ſeemeth, and ſo the donor or his heires in ſuch caſe ought ſooner to haue the land than the ſecond ſonne, that had not any right before ſuch alienation, and ſo it ſeemeth that ſuch remainders in the caſe aforeſaid are void.

¶ HEre it is to bée obſerued, that part of the condition that prohibiteth the alienation made by tenāt in taile is good in Law with ſuch diſtinction as hath béen before ſaid in the Chapter of Conditions. And the conſequent of the Condition, viz. that the lands ſhould remaine to another, &c. is void in Law, and by the opinion of Littleton the Donor may reenter for the Condition broken, for vile per inutile non vitiatur. Which being in caſe of a Condition for the defeating of an eſtate, is worthy of obſeruation.

And it is to bée noted, that after the death of the Donor, the Condition deſcendeth to the eldeſt ſonne, and conſequently his alienation doth extinguiſh the ſame for euer, wherein the weakneſſe of this inuention appeareth, and therefore Littleton here ſaith, that it ſéemeth that the Donor may re-enter, and ſpeaketh nothing of his Heires. A man hath iſſue two ſonnes, and maketh a Gift in taile to the eldeſt, the Remainder in fée to the puiſne, vpon condition, that the eldeſt ſhall not make any Diſcontinuance with Warrantie to barre him in the Remainder, & if he doth, that then the puiſne ſonne & his heires ſhall re-enter, the eldeſt make a Feoffment in Fée with Warrantie, the father dieth, the eldeſt ſonne dieth without iſſue, the puiſne may enter, but if the Diſcontinuance had béene after the death of the father, the puiſne could not haue entred. In this caſe foure points are to be obſerued. Firſt, as Littleton here ſaith, the Entrie for the breach of the Condition is giuen to the father, and not to the puiſne ſonne. Secondly, that by the death

41.E.3 fol.

Vide Sect.446.

of the Father the condition descends to the elder Sonne, and is but suspended, and is reuiued by the death of the eldest Sonne without Issue, and descendeth to the youngest Sonne. Thirdly, That the Feoffment made in the life of the Father cannot giue away a condition that is Collaterall, as it may doe a right. Fourthly, That a Warrantie cannot binde a title of Entrie for a condition broken, (as hath been said) but if the discontinuance had been made after the death of the Father, it had extinct the condition: Which case is put to open the reason of our authors opinion.

In these last three Sections our Author hath taught vs an excellent point of Learning. That when any innouation or new inuention starts vp, to trie it with the Rules of the common Law, (as our Author here hath done) for these be true Touchstones to seuer the pure gold from the drosse & sophistications of nouelties & new inuentions. And by this example you may perceiue, That the rule of the old common Law being soundly, (as our Author hath done) applyed to such nouelties, it doth vtterly crush them and bring them to nothing, and commonly a new inuention doth offend against many rules & reasons (as here it appeareth) of the common Law, and the antient Judges and Sages of the Law haue euer (as it appeareth * in our Bookes) suppressed innouations and nouelties in the beginning, as soone as they haue offered to creepe vp, lest the quiet of the common Law might be disturbed: and so haue (a) Acts of Parliament done the like, whereof by the authorities quoted in the margent, you may in stead of many others, vpon this occasion take a little taste. But our excellent Author in all his three Bookes hath said nothing but Ex veterum sapientium ore, & more.

* 31.E.3. Gager deliuerance 5.22.Ass.12. 38.E.3.1.2.H.4.18.&c.

(a) 1.E.3.cap.15. Stat.3. 18.E.3.cap.1.& 6. 4.H.4.c.2. 11.H.6.c.23. 12.E.4.cap.8.&c.

v. avant 282. b.

Sect. 724, 725.

Item, a le Common Ley deuant lestatute de Glouc. 3 cester, si tenant p le Curtesie vst alien en fee ouesque Garrantie, apres son decease ceo fuit vn barre al Heire, sicome appiert p les parols de mesme lestatut: mes il est remedy p mesme lestatute que le Garrantie de le Tenant p le Curtesie, ne ſt̄ my bar al hr̄e, sinon que il y ad assets per discent per le tenant per le curtesie, car deuant le dit estatute, ceo fuit vn Collaterall Garrantie al hr̄e, pur ceo que il ne pusſoit conueyer ascun title de Discent a les tenements per le tenant p le Curtesie, mes tantsolement per sa mere, ou auters de ses ancestors, & ceo est le cause pur que il fuit Collateral Garrantie.

Also at the Common Law before the Statute of Glouc. 3 cester, if Tenant by the Curtesie had aliened in Fee with warrãtie, after his decease this was a barre to the Heire, as it appeareth by the words of the same Statute: but it is remedied by the same Statute, That the Warrantie of Tenant by the Curtesie shall bee no barre to the Heire, vnlesse that hee hath Assets by Discent by the Tenant by the Curtesie, for before the sayd Statute this was a Collaterall warrantie to the Heire, for that hee could not conuey any title of Discent to the tenements by the tenant by the Curtesie, but only by his mother, or other of his Ancestors, and this is the cause why it was a Collateral Warrantie.

Sect. 725.

Mes si home enherit prent feme, les queux ont fits enter eux, et le pier deuie, et le fits

But if a man Inheritor taketh wife, who haue issue a sonne betweene them, and the father di-

fits entra en la Terre, & endowa ſa mere, & puis la mere alien ceo que el ad en ſa Dower, a vn auter en Fee oue Garrantie accordant, & puis morust, & le Garrantie deſcendiſt a le fits, ore le fits ſerra barre a demaunder meſme la Terre p cauſe de la dit Garrantie, pur ceo que tiel collaterall Garrantie de Tenaunt en Dower neſt pas remedie per aſcun Eſtatute. Meſme la Ley eſt lou Tenaunt a terme de vie fait vn Alienation oueſqz Garrantie, &c. & morust, & le Garrantie diſcendiſt a celuy que auoit le reuerſion ou le remainder, ils ſerront barres per tiel Garrantie.

eth, & the ſonne entreth into the land, and endow his mother, & after the mother alieneth that which ſhee hath in Dower to another in Fee with Warrantie accordant, & after dieth, & the Warrantie deſcendeth to the ſonne, now the ſon ſhal be barred to demand the ſame Land by cauſe of the ſaid Warrantie, becauſe that ſuch Collaterall Warrantie of Tenaunt in Dower is not remedied by any Statute. The ſame Law is it, where Tenant for life maketh an Alienation with Warrantie, &c. and dieth, and the Warrãty deſcẽdeth to him which hath the reuerſion or the rem', they ſhall be barred by ſuch Warrantie.

¶ Of this and the ſubſequent Section ſufficient hath bẽene ſayd before in this Chapter, Sect. 697.

¶ *Neſt pas remedie per aſcun Statute.* But by a Statute made ſince, this Caſe is remedied, as you ſee before, Sect. 697. & after § 727.

Sect. 726.

¶ Item, en le dit Caſe, ſi iſſint fuit que quant le Tenant en Dower alienaſt, &c. ſon heire fuit deins age, & aury al temps que le Garrantie diſcendiſt ſur luy, il fuit deins age, en ceſt cas lheire poit apres enter ſur lalienee, nient contriſteant le garrantie diſcendiſt, &c. p ĉ q̃ nul lacheſſe ſerra adiudg' en lheire deins age que il nentra pas ſur lalienee en la vie le tenãt en Dower. Mes

Alſo in the Caſe aforeſaid, if it were ſo that when the Tenant in Dower alienes, &c. his heire was within age, and alſo at the time that the warrantie deſcẽded vpon him hee was within age, In this Caſe the Heire may after enter vpon the alienee, notwithſtãding the Warrantie deſcended, &c. becauſe no Lacheſſe ſhalbe adiudged in the heire within age, that he did not enter vpon the alienee in the life

¶ Here note this diuerſitie, if the Heire bee within age at the time of the Diſcent of the Warrantie, he may enter and auoid the Eſtate either within age, or at any time after his full age: And Littleton ſaith well, That the Enfant in this Caſe may enter vpon the Alienee, for if hee bring his action againſt him, he ſhal be barred by this warrantie, ſo long as the eſtate whereunto the Warrantie is annexed continue, and be not defeated by entrie of the heire: but if hee be within age at the time of the alienation with Warrantie, and become of full age before the Diſcent of the warranty, the warranty ſhall barre him for euer. Our author putteth his caſes where the Entrie of the Infant is lawfull, (a) for where the entrie of the Infant is not lawfull

18. E. 4. 13. 35. H. 6. 63. 28 Aſſ. pl. 32. E. 3. Gar. 30.

35. H. 6. 63.

(a) 1. H. 7. 9. 35. H. 6. 63 Br. tit. War. 54. 33. H. 8. tit. War. Br. 84. Lib. 1. fol. 67. a in Archers caſe, & 140. Chudleyes caſe.

full when the warrantie descendeth, the warrantie doth binde the Enfant, as well as a man of full age, & the reason thereof is, because the state whereunto the warrantie was annexed, continueth and cannot be auoided but by action, in which action the warrantie is a barre: & for the same reason likewise it is of a Feme Couert, if her entrie be not lawfull, a warrantie descending on her during the Couerture, doth bind her. (w) And albeit the Husbād be within age at the discent of the warrantie, yet if the entrie of the wife be taken away, the warrantie shall binde the Wife.

(w) 18. E. 3. 3.

(q) And herein a diuersitie is to bee obserued betweene matters of Record done or suffered by an Enfant, and matters in Fait, for matters in Fait he shall auoid either within age, or at full age, as hath beene said: but matters of Record, as Statutes Merchants, & of the Staple, Recognizances knowledged by him, or a Fine leuied by him, recouerie against him by default in reall action (sauing in Dower) must be auoyded by him, viz. Statutes, &c. by Audita querela, and the fine and recouerie by Writ of Error during his minoritie, and the like. And the reason thereof is because they are iudiciall acts, and taken by a Court or a iudge, therefore the nonage of the Partie, to auoid the same, shall be tried by inspection of Iudges, and not by the Country. And for that his nonage must be tried by inspection, this cannot be done after his full age: and so is the Law cléerely holden at this day, though there bée some difference in our Bookes. But if the age be inspected by the Iudges, and recorded that he is within age, albeit he come of full age before the reuersall, yet may it be reuersed after his full age, * And so was it resolued by the whole Court of Kings Bench in the case of Kekewiche.

(q) 20. E. 3. Audit. quær. 27. F. N. B. 104. k. 6. E. 3. 39. 17. E. 2. 76. 17. Ass. 53. 17. 21. E. 2. 4. 11. E. 3. Aud quær. 26. 18. E. 3. Infant. 61. 16. H. 7. 5. 15. E. 4. 5. 8. H. 6. 30. 1. H. 7. 15.

6. H. 8. Sauer de defaute Br. 50. 3. H. 10. 6. 1. Mar. Dy. 104.

* Pasch. 13. Ia. R. in the Kings Bench.

If Lands had beene giuen to the husband and wife and their heires, and the Husband had made a Feoffment to another, to whom a Collaterall Ancestor of the Wife had released and died, & the Husband died, (and this had beene before the Statute of 32. H. 8.) this Warrantie had so bound her waiuable right, as she could not waiue her estate, and claime Dower. Otherwise it is of an Estate determined: for if a Disseisor make a Lease to the Husband and Wife during the life of the Husband, and the Husband dieth, she may disagree to this Estate determined, to saue her selfe from dammages. And so note a diuersitie betweene an estate determined, and an estate bound by Warrantie.

32: 18: ca: 28

¶ *Nul laches serra adiudge en le Heire deins age.* Laches, or Lasches is an old French word for slackneſſe, or negligence, or not doing. And the Rule (That no negligence shall be adiudged in an Enfant) is true, where he is thereby to be barred of his entrie in respect of a former right, as by a Discent, or of his former right, (as Littleton doth here put an example) by a Warrantie where his Entrie is congeable. But otherwise it is of Conditions, charges and penalties going out of, or depending vpon the originall Conueyance, for the Laches or negligence shall be adiudged in those cases as well in the Infant as in any other. (y) Vide Pl. Com. Stowels Case per totum. And see further there, where an Infant being tenant for life or yeares, shall be punished for doing or suffering of Waste, and where he claimeth by purchase, a Cessauit shal lie against him, if he pay not his Rent by two yeares. And some haue said, If he haue the Tenancie by discent, and he himselfe cesse, a Cessauit doth lie, and he shall not haue his age because it is of his owne Cesser, 31. E. 3. Age 54. But other Bookes (as some conceiue them) be against that: Vide 9. Ed. 3. 50. 28. E. 3. 99. 14. E. 3. Age 88. 2. E. 2. Age 132. and

Reg:

(y) Pl. Com. Stowels case. 355. &c.

si lhē fuit deins age al Temps del alienation, &c. & puis il deuient al pleine age en la vie d̄ le tenaunt en Dower, & illint este ant d̄ pleine age, il nentra pas sur lalienee en la vie d̄ le tenant en Dower, & puis le Tenant en Dower morust, &c. la peraduenture lhē serra barr̄ per tiel Garrantie, pur ceo que il serra recte sa follie, que il esteant d̄ pleiñ age, ne entra pas en la vie de le Tenant en Dower, &c.

of Tenant in Dower. But if the Heire were within age at the time of the alienation, &c. and after he commeth to full age in the life of Tenant in Dower, and so being of full age he doth not enter vpon the Alienee in the life of Tenant in Dower, and after the Tenant in Dower dieth, &c. there peraduēture the Heire shall bee barred by such Warrantie, because it shall bee accounted his folly, that he being of full age did not enter in the life of Tenant in Dower, &c.

and others, which Bookes doe not proue that the Cessuie doth not lye in that case, but the contrary, that hee shall haue his age to the end, hee may at his full age certainly know what to plead, or what arrerages to tender, for the Land was originally charged with the Seigniorie and Seruices.

Sect. 727.

CMEs ore per lestatute fait 11. H. 7. cap. 10. il est ordeine, si ascun feme discontinue, alien, release, ou confirme oue Garrantie ascun terr̃ ou Tenements que el tient en dower pur term̃ de vie, ou en tayle del done sa primer baron, ou de ses Ancesters, ou ōl don̄ dascun auter seisie al vse le primer baron, ou ō ses Ancesters, que touts tiels Garranties, &c. serront voides, & q̄ bñ lirroit a cestuy q̄ auoit ceux terres ou tenements apres la mort de mesm̃ la feme denter.

BUt now by the Statute made 11. H. 7. cap. 10. it is ordained if any woman discontinue, alien, release or confirme with Warrantie any Lands or Tenements which she holdeth in Dower for terme of life, or in taile of the gift of her first husband, or of his Ancestors, or of the gift of any other seised to the use of the first husband or of his Ancestours, that all such Warranties, &c. shall be void, and that it shall bee lawfull for him which hath these Lands or Tenements after the death of the same woman to enter.

11. H. 7 cap. 20.

CThis is an addition to Littleton, and therefore to be passed ouer. And hereof sufficient hath beene said before, Sect. 697.

Sect. 728.

CItem, il est parle en le fin̄ de le dit estatut̄ de Glouc̄est. q̄ parle del alienation ouesque garrantie fait per le Tenant per l' curtesie en cest form̄. Enlement, en mesme le manner ne soit lheire la feme apr̄s la mort le pere & le mere barre daction, sil demanda lheritage ou l' mariage, sa mere per briefe Dentre, que son per̄ aliena en temps sa mer̄, dont nul fine est leuy en la Court le

ALso it is spoken in the end of the said statute of *Glouc.* which speaketh of the alienation with Warrantie made by the tenant by the courtesie in this forme. Also, in the same manner, the heire of the woman after the death of the father and mother shall not bee barred of action, if hee demandeth the heritage or the marriage of his Mother by writ of Entry, that his father aliened in his mothers time,

CDont nul fine est leuy en le Court le Roy, &c. Here are three things worthy of obseruation concerning the construction of Statutes. First, that (a) it is the most naturall and genuine exposition of a Statute to construe one part of the Statute by another part of the same Statute, for that best expresseth the meaning of the makers. As here the question vpon the generall words of the Statute is, whether a fine leuied onely by a husband seised in the right of his wife with Warranty shall bar the heire without assets. And it is well expounded by the former part of the act, whereby it is enacted, that alienation made by Tenant by the curtesie with warrantie shall not bar the heire, vnlesse assets descend,

(a) Pl. Com. fol. 75. 7. E. 3. 89.

Vide Bract. lib. 4. f. 321. Flet. lib. 5. cap. 34.

cend. And therefore it should be inconuenient to intend the Statute in such manner, as that he that hath nothing but in the right of his wife should by his fine leuied with warrantie barre the heire without assets. And this exposition is ex visceribus actus.

Roy: & illint p force de mesme lestatut, si le baron ôl femm aliena lheritage, ou mariage sa femm en fee oue Garrantie, &c. p son fait en pays, ceo est cleer Ley, que cest Garrantie ñ barrera my lheire, sinon que il ad Assets per discent.

wherof no fine is leuied in the Kings Court. And so by force of the same statute, if the husband of the wife alien the heritage or mariage of his wife in fee with Warrantie, &c. by his Deed in the Countrey, it is cleere law, that this Warranty shall not bar the heire, vnlesse hee hath Assets by discent.

Secondly, The words of an act of Parliament must bee taken in a lawfull and rightfull sense, as here the words being (whereof no fine is leuied in the Kings Court) are to be vnderstood, whereof no fine is lawfully or rightfully leuied in the Kings Court. And therefore (b) a fine leuied by the husband alone, is not within the meaning of the Statute, for that fine should worke a wrong to the wife, but a fine leuied by the husband and wife is intended by the Statute, for that fine is lawfull and worketh no wrong. (c) So the Statute of W.2. c.5. saith (Ita quod Episcopus Ecclesiam conferat) is construed, Ita quod Episcopus Ecclesiam legitimè conferat, and the like in a number of other Cases in our Bookes. And generally the rule is, Quod non præstat impedimentum quod de iure non sortitur effectum.

1. f. 731.

(b) Pl. Com. 246.b. Seignior Barkleyes case li.9. fol. 26. in case del Abbot de Strata mercella.

(c) 11.H.4.80. 9.E.4.12. 21.H.6.28. 4.E.4.31. 12.H.4. Formedon 15.

Thirdly, that construction must be made of a statute in suppression of the mischiefe, and in aduancement of the remedie, as by this Case it appeareth. For a fine leuied by the husband only, is within the letter of the Law, but the mischiefe was, the heire was barred of the Inheritance of his mother, by the Warrantie of his father without Assets, & this act intended to apply a remedy, viz. that it should not barre vnlesse there were assets, & therefore the mischiefe is to be suppressed, and the remedie aduanced. Et qui hæret in litera, hæret in cortice, as often before hath beene said.

Sect. 729, 730, & 731.

MEs l'doubt est, si l'baron alienast lheritage la feme, p fine leuy en la Court l'Roy oueqz Garrantie, &c. si ceo barrera lheire sans ascun discent en value. Et quant a ceo, ieo voile icy dire certaine reasons que ieo ay oye dit en cest matter. Jeo ay oye mon Master S. Richard Newton, iades chiefe Justice de Common Banke, dire vn foits en mesme le Banke, que tiel Garrantie que le baron fait per fine leuie en le Court le Roy, barrera lheire, coment que il ad riens per discent, pur ceo que lestatut dit (dont nul fine est leuy ẽ l'Court le Roy) & issint per son opinion

BUt the doubt is, if the husband alien the heritage of his wife by fine leuied in the Kings Court with Warrantie; &c. if this shall barre the heire without any discent in value. And as to this I will here tell certaine reasons, which I haue heard said in this matter. I haue heard my Master Sir *Richard Newton*, late Chiefe Iustice of the Common Pleas, once say in the same Court, that such Warrantie as the husband maketh by fine leuied in the Kings Court shal barre the heire, albeit hee hath nothing by discent, because the Statute saith (whereof no fine is leuied in the Kings Court) and so by his

opinion cel garrantie per fine demurt vncore vn collaterall Garrantie, come il fuit a le common ley, nient remedy per le dit estatute, pur ceo que le dit estatute except alienations per fine oue Garrantie.

opinion this Warrantie by fine remaineth yet a collaterall Warrantie as it was at the Common Law not remedied by the said Statute, because the said Statute excepteth alienations by fine with Warrantie.

Sect. 730.

CEt aſcuns auters ont dit, et vncore dient le contrarie, et ceo eſt lour proofe, que come per meſme le Chapiter de dit eſtatute il eſt ordeine, que le Garrantie le tenant per le curteſie ne ſerra my barre al heire, ſinon que il ad aſſets per diſcent, &c. coment que le tenant per le curteſie levie vn fine de meſmes les Tenements oueſque Garrantie, &c. auxi forment come il poit faire vncore cel Garranty ne barra my lheire, ſinon que il ad Aſſets per diſcent, &c, & ieo croy que ceo eſt ley, & pur ceo ils dient, que ſerroit inconuenient dentender le ſtatute en tiel forme, q̃ vn home que nad riens forſque en droit ſa feme purroit per fine leuie per luy de meſmes les Teneme̅ts queux il ad forſque en droit ſa feme oue Garranty, &c. barre lheire de meſmes les Tenements ſans aſcun diſcent de fee ſimple, &c. lou le tenant per le curteſie ceo nepuit faire.

AND ſome others haue ſaid, and yet doe ſay the contrary, and this is their proofe, that as by the ſame Chapter of the ſaid Statute it is ordained that the Warrantie of the tenant by the courteſie ſhall be no barre to the heire, vnleſſe that he hath Aſſets by diſcent, &c. although that the tenant by the courteſie levie a fine of the ſame tenements with Warrantie, &c. as ſtrongly as hee can, yet this Warrantie ſhall not barre the heire, vnleſſe that hee hath Aſſets by diſcent, &c. And I beleeue that this is Law, and therefore they ſay, that it ſhould be inconvenient to intend the Statute in ſuch maner, as a man that hath nothing but in right of his wife might by fine leuied by him of the ſame Tenements which he hath but in right of his wife with Warrantie, &c. barre the heire of the ſame Tenements without any diſcent of fee ſimple, &c. where the Tenant by the courteſie cannot doe this.

Sect. 731.

CMES ils ont dit que le ſtatute ſerra entend ſolonqz cel forme, s. lou le Statute dit, dont nul fine eſt leuie en Court le Roy, ceo eſt adire, dont nul loial fine

BVt they haue ſaid that the Statute ſhall bee intended after this manner, s. where the Statute ſaith, whereof no fine is leuied in the Kings Court, that is to ſay,

fine eſt droiturelment leuy en la Court le Roy, ceo eſt adire, dont nul loial fin eſt droiturelmẽt leuy en la court le Roy: Et ceo eſt dont nul fine de le baron & ſa feme ſoit leuie en le Court le Roy, car al temps de le feſans del dit eſtatute, cheſcun eſtate de terres ou tenements que aſcun home ou feme auoit, que diſcenderoit a ſon heire, fuit fee ſimple ſans condition, ou ſur certaine conditions en fait, ou en ley. Et pur ceo que adonques tiel fine poit droiturelment eſtre leuie per le baron & ſa feme, & les heires le baron garranteront, &c. tiel garrantie barrera lheire, & iſſint ils diont que ceſt lentendement de leſtatute, car ſi le baron & ſa feme fieront vn feoffement en fee per fait en pais, ſon heire apres le deceaſe le baron et ſa feme auera briefe Dentre ſur Cui in vita, &c. nient obſtant le garrantie de le baron, donque ſi nul tiel exception fuit fait, en leſtatute de le fine leuie, &c. donque lheire aueroit le briefe Dentre, &c. nient obſtant le fine leuie per le baron & ſa feme, pur ceo que les parolx de leſtatute deuant lexception de fine leuie, &c. ſont generals, &c. ceſta ſcauoir que lheire la feme apres le mort le pere et la mere ne ſoit barr̃ daction, ſil demand lheritage, ou le mariage ſa mere, per briefe Dentre, que ſon pere aliena en temps ſa mere, & iſſint coment que le baron & la feme alienent per fine, vncore ceo eſt voier, que le baron aliena en temps la mere, et iſſint il ſerroit en caſe de leſtatute, ſinon que tielx parolx fueront, s. dont nul fine eſt leuie en

whereof no lawful fine is rightfully leuied in the Kings court: And that is, whereof no fine of the husband and his wife is leuied in the Kings Court, for at the time of the making of the ſaid Statute, euery eſtate of Lands or tenements that any man or woman had which ſhould deſcend to his heire, was fee ſimple without condition, or vpon certain conditions in Deed or in Law. And becauſe that then ſuch fine might rightfully be leuied by the huſband and his wife, and the heires of the huſband ſhould warrant, &c. ſuch warrantie ſhall barre the heire, and ſo they ſay that this is the meaning of the ſtatute, for if the huſband and his wife ſhould make a feoffement in fee by Deed in the Countrie, his heire after the deceaſe of the huſband and wife ſhall haue a Writ of entrie *Sur Cui in vita, &c.* notwithſtanding the Warrantie of the husband, then if no ſuch exception were made in the Statute of the fine leuied, &c. then the heire ſhould haue the Writ of entrie, &c. notwithſtanding the fine leuied by the huſband and his wife, becauſe the words of the ſtatute before the exception of the fine leuied, &c. are generall, *viz.* that the heire of the wife after the death of the father and mother is not barred of action, if he demand the heritage or the marriage of his mother by Writ of entrie, that his father aliened in the time of his mother, and ſo albeit the huſband and wife aliened by fine, yet this is true that the huſband aliened in the time of the mother, and ſo it ſhould bee in that caſe of the ſtatute, vnleſſe that ſuch

en la Court le Roy, & iſſint ils dient que ceo eſt a entender, dont nul fine per le baron & ſa feme eſt leuie en la Court le Roy, le quel eſt loialment leuie en tiel caſe, car ſi les Juſtices ont conuſans', que home que nad riens forſque en droit ſa feme voile leuier vn fine en ſon noſme ſolement, ils ne voylont, ne vnque deuoyent prender tiel fine deſtre leuie per le baron ſolemẽt ſans ſa fem̃, &c. Ideo Quære de ceſt matter, &c.

words were, *viz.* whereof no fine is leuied in the Kings Court, & ſo they ſay that this is to be vnderſtood, whereof no fine by the huſband and his wife is leuied in the Kings court, the which is lawfully leuied in ſuch caſe, for if the Iuſtices haue knowledge, that a man that hath nothing but in the right of his wife will leuie a fine in his name onely, they will not, neither ought they to take ſuch fine to be leuied by the husband alone without his wife, &c. *Ideo Quære* of this matter, &c.

¶ *Eo ay oye mon maſter Sir* R. Newton, *&c.* Who was a Gentleman of an ancient family, in Latine de nova villa, in French de neuſe ville, and a reuerend learned Iudge, and worthily aduanced to be Chiefe Iuſtice of the Court of Common pleas, whom our Authour remembers with great reuerence, as by his words you may perceiue, calling him, his Maſter, and citeth his opinion deliuered once in the Court of Common pleas, which our Authour heard and obſerued (whoſe example therein, it is neceſſary for our Student to follow) but the latter opinion (as hath beene before obſerued) being Littletons owne, is againſt the opinion of the Lord Newton (d) and the Law is holden cleerely with our Authour at this day, and our Authour (as in all other caſes) hath good authoritie in Law to warrant his opinion, Nullius hominis authoritas tantum apud nos valere debet, vt meliora non ſequeremur ſi quis attulerit.

(d) Bracton 321. Fleta lib. 5. cap. 34. 8. E. 2. Gar. 81. 18. E. 3. 51. 7. E. 3. 84. Pl. Com. 57.

¶ *Car ſi les Iuſtices ont conuſance, &c.* Hereby it appeareth (e) that the Iudge, if hee knoweth it, ought not to take knowledge of a Fine that worketh a wrong to a third perſon.

Sect 731.
(e) 33. H. 6. 52. 5. E. 3. 56. 2. Eliz. Dier. 178. 1. H. 7. 9. 1. Mar. 89. 4. E. 3. 41. 7 Eliz. Dier. 246. Vid Sect. 87. &c.

¶ *Que ſerroit inconvenient.* Argumentum ab inconuenienti, is very forcible in Law, as often hath beene obſerued.

Of the reſt of theſe three Sections ſufficient hath beene ſaid before.

Sect. 732.

¶ ITem, eſt aſcauoir, que en ceux parolx, ou lheire demande lheritage, ou le mariage ſa mere, ceſt parol (ou) eſt vn diſiunctiue, et eſt autant a dire, ſi lheire demande le heritage ſa mere, s. les tenements que ſa mere auoit en fee ſimple per diſcent, ou per purchaſe, ou ſi lheire demaund le marriage ſa mere, ceſt aſcauoir, les tenements que

ALſo it is to bee vnderſtood, that in theſe words where the heire demands the heritage, or the marriage of his mother, this word (or) is a diſiunctiue, and is aſmuch to ſay, if the heire demand the heritage of his mother, *viz.* the tenements that his mother had in fee ſimple by diſcent or by purchaſe, or if the heire demaund the marriage of his mother, that is

que sueront dones a sa mere en frankmariage.

to say, the tenements that were giuen to his mother in frankmarriage.

Some doe expound heritage of the mother to be the lands which the mother hath by discent. And that construction is true, but the Statute by the authoritie of Littleton extendeth also where the mother hath it by purchase in fée simple, for so saith Littleton himselfe, that this word (Inheritance) is not only intended where a man hath lands by discent, but where a man hath a fée simple by purchase, because his heires may inherit him. And albeit it be true, that the Statute extendeth to an estate in Frankmarriage acquired by purchase, yet doth it extend also to all estates intaile, aswell by discent as by purchase, for that Frankmarriage is put but for an example.

Vide Sect. 9.

Sect. 733.

(a) 6.E.2, Vouch. 258. 12.E.2, ib. 262, 14.H.4.15

(b) 38 E. 3, 14.

(c) Bract. fol 37, 238. & Lib. 5. 380, 381. Brit. fol. 106. b. Flet. lib. 5. cap. 15. & lib. 6. cap. 23. 35. H. 8. 8. Gar. 90. F. N. B. 134. b.

Brit. vbi sup. Flet ubi sup. 11.H.6.48. 5.E.2. Gar. 262.

(a) EGo & hæredes mei warrantizabimus, & imperpetuum defendemus. wherein three things are to be obserued: First, That Hæredes mei are words of necessitie, for otherwise the Heires are not found. (a) Secondly, Though in the clause of the Warrantie it bee not mentioned to whom, &c. yet shall it be intended to the Feoffée. (b) Thirdly, That the Feoffor may by expresse words warrant the Land for the life of the Feoffée, or of the Feoffor, &c. but the recouerie in value shall bee in Fee. (c) Of this Bracton writeth in this manner, Et ego & hæredes mei warrantizabimus tali & hæredibus suis tantùm vel tali & hæredibus & assignatis, & hæredibus assignatorum, vel assignatis assignatorum, & eorum hæredibus, & acquietabimus & defendemus eos totam terram illam cum pertinentiis, contra omnes gentes, &c. per hoc autem quod dicit (ego & hæredes mei) obligat se & hæredes ad warrantiam, propinquos, & remotos, præsentes & futuros & succedentes in infinitum. Per hoc autem quod dicit (Warrantizabimus) suscipit in se obligationem ad defendendum suum tenentem in possessione rei datæ & assignatos suos & eorum hæredes & omnes alios, &c. Per hoc autem quod dicit (acquietabimus) obligat se & hæredes suos ad acquietandum si quis

(a) ITem, come est moue en diūs Faits, ceux parolx en Latine, Ego & hæredes mei warrantizabimus, & imperpetuum defendemus, il est a veier q̄l effect ad cel parol, Defendemus, en tiel faits, & il semble que il nad pas leffect de Garrantie, ne emprent en luy la cause de Garrantie, car sil issint serroit, que il prent effect ou cause de Garrantie, donqz il serroit mitte en ascuns fines levies en la Court le Roy: Et home ne veiet ceo vnque, que cest parol Defendemus, fuit en ascun fine, mes tant solement cest parol Warrantizabimus, perque semble que cest parol & Verbe Warrantizo, fait la Garrantie, & est la cause de Gar-

(a) ALso where it is contained in diuers Deedes these words in Latine, *Ego & Hæredes mei warrantizabimus & imperpetuum defendemus*; it is to be seene what effect this word (*Defendemus*) hath in such Deeds; and it seemeth that it hath not the effect of Warrantie, nor comprehendeth in it the cause of warranty, for if it should be so that it tooke the effect or cause of Warrantie, then it should bee put into some fines leuied in the Kings Court, and a man neuer saw, that this word (*Defendemus*) was in any Fine, but only this word (*Warrantizabimus*) By which it seemeth, That this word & Verbe (*Warrantizo*) maketh the Warrantie, and is the

Warrantie, & nul auter Verbe en nostre Ley.

cause of Warrantie, and no other word in our Law.

plus petierit servitij vel aliud servitium quam in carta donationis continetur. Per hoc autem quod dicit (Defendemus) obligat se & hæredes suos ad defendendum si quis velit servitutem ponere rei datæ contra formam suæ donationis. (d) **Hereby it appeareth, That neither** Defendere **nor** Acquietare **doth create a warrantie, but** Warrantizare **only. And as** Ego & hæredes mei warrantizabimus, &c. **in Latine doe create a warrantie; so I and my heires shall warrant, &c in English, doth create a warrantie also.**

(d) 46.E.3.28.11.H.4.41. 6.E.2.Vouch.203. 2.E.4.15.2.

(e) **If a man be bound to A. in an Obligation, to defend such lands to A. whereof the Obligor had infeoffed him for twelve yeares, &c. in this case if he be ousted by a stranger without being impleaded, the Obligation is forfeit: but if he bee bound to warrant the Land, &c. the Bond is not forfeited, unlesse the Obligee be impleaded, and then the Obligor must be readie to warrant, &c.**

(e) 2 E.4.15.tit. Det.71.

¶ *Donques il serra mit en ascuns fines, &c.* **Here** Littleton **draweth an Argument from the forme and words of a Fine, and his reason is this, That seeing that a Fine is the highest and surest kinde of assurance in Law, if** Defendemus **had the force of a warrantie it would have beene contained in Fines: and on the other side seeing this word** Warrantizo **is contained in Fines to create a warrantie, that therefore that word doth imply a warrantie, and not the other.**

¶ *Et nul auter Verbe en nostre Ley.* **Here it appeareth, That no other Verbe in our Law doth make a warrantie, but** Warrantizo **only, which is only appropriated to create a warrantie.**

46.E.3.28. Vide Sect.1.

But, Qui benè distinguit, benè docet **and here, of necessitie you must distinguish, * First, betweene a warrantie annexed to a Freehold or Inheritance, (whereof** Littleton **here speaketh) and a warrantie annexed to a ward, which is a Chattell reall, for there, Grant, Demise, & the like, doe make a warrantie. And of warranties annexed to Freeholds and Inheritances, some be warranties in Deed, and some be warranties in Law. A warrantie in Deed, or an expresse warrantie, (whereof** Littleton **here speaketh) is created only by this word** Warrantizo, **but warranties in Law are created by many other words; they be therefore called warranties in Law, because in iudgement of Law they amount to a warrãtie without this Verbe** Warrantizo. (f) **As** Dedi **is a warrantie in Law to the Feoffee and his heires during the life of the Feoffor, but** Concessi **in a Feoffement or Fine implyeth no warrantie. But before the Statute of** Quia emptores terrarum, **if a man had given lands by this word** Dedi, **to have and to hold to him & his heires, of the Donor and his heires, by certaine Services, then not only the Donor but his heires also had beene bound to warrantie, But if before that Statute a man had given Lands by this word** Dedi, **to a man and to his heires for ever, to hold of the chiefe Lord, there the Feoffor had not beene bound to warrantie, but during his life, as at this day he is.**

Sect.697. *31.E.3.Vouch.24.12. Rich.2.tit.Cont.de Vouch.35. 29.E.3.48. 50.E.3.6.b. Symken Symons case. 8 E.3 61. 12.E.3.Vouch.27. Temps E.1.Vouch. 302. 3.H.6.17.

(f) Lestat.de Bigamis c.6 an.4. & 2.11.7.7. 6.H.7.2.48.E. 3.2.31.E.1.tit. Vouch. 290. Fitz. N B.134.b 6.E.2.Vouch.258.

And albeit the words of the Statute of Bigamis **be,** In cartis autem ubi continentur (Dedi & concessi, &c.) **Yet if** Dedi **be contained alone, it doth import a warrantie, for the Statute doth conclude,** Ipse tamen feoffator in vita sua ratione proprij doni sui tenetur warrantizare. **So as** Dedi **is the word that implyeth warrantie, and not** Concessi. **Also where the words of the Statute bee further,** sine clausula quæ continet Warrantiam, **the meaning of the Statute is, That** Dedi **doth import a warrantie in Law, albeit there bee an expresse warrantie in the Deed.**

For if a man make a Feoffement by Dedi, **and in the Deed doth warrant the Land against I.S. and his heires, yet** Dedi **is a generall warrantie during the life of the Feoffor, and so was the Statute expounded in both points,** (g) Hil.14.El. **in the Court of Common Pleas, which I my selfe heard and observed.** (h) **And if a man make a Lease for life reserving a Rent, and adde an expresse warrantie, here the expresse warrantie doth not take away the warrantie in Law, for he hath election to vouch by force of either of them. And in** Nokes **Case note a diversitie betweene a warrantie that is a Covenant reall, and a warrantie concerning a Chattell.** (i) **Also this word** Excambium **doth imply a warrantie.**

(g) Hil.14. El. in Com. Banc.

(h) Lib 4.fol.80.in Nokes case. 8.E. 3.69. 9.E.3 15. 10.E.3. 11. 20.E.3.Cont. de Gar.7. 31.E.3.Vouch.280. 32.E.3.ib.102. 43.E.3.3. 2.E.3.tit. Cui in vita 17. 3.E.3. Formedon 44.

(i) 4.E.2.Vouch.245. 22.E.3.3. 14 H.6.2. 20.H 6.14. Lib.4.fol.122 in Bustards Case. 15.E.3. Bar.255. 43.E.3.3. Lib.1. fol.96. Lib.5.fol. 17. Spencers case. Lib.8.fol. 75. Sne Staffords case.

Also a Partition implyeth a warrantie in Law as in the Chapter of Parceners appeareth. And Homage auncestrell doth draw to it selfe warrantie, as hath beene said in the Chapter of Homage auncestrell.

And it is to be observed, That the warrantie wrought by this word Dedi **is a special warrantie, & extendeth to the heires of the Feoffee during the life of the Donor only. But upon the Exchange and Homage auncestrell the warrantie extendeth reciprocally to the heires, and against the heires of both parties: and in none of the Cases the assignée shall vouch by force of**

of any of these Warranties, but in the case of the exchange and Dedi the assignée shall rebut, but not in the case of Homage ancestrell.

(k) And so no man shall haue a writ of Contra formam collationis, but only the Feoffee and his Heires which be priuie to the Deed, but an assignée may rebut by force of the Deed.

(k) 28.Ass. 33. 14.H.4.5. 18.E.3.18. 4.E.2.Auow. 201,& 202. 19.E.3.Auowr. 201,202. 11.E.3. Auowr.100. 30.H.6.7. 33.H.8.Dyer.51. 10.H.7. 11.b.F.N.B.163.a.

(l) If a man make a gift in taile or a Lease for life of Land, by Deed or without Deed, reseruing a Rent, or of a Rent seruice by Deed, this is a Warrantie in Law, and the Donée or Lessée being impleaded shall vouch and recouer in value. And this warrantie in Law extendeth not only against the Donor or Lessor, and his Heires, but also against his assignees of the Reuersion, and so likewise the Assignée of Lessée for life shall take benefit of this warrantie in Law.

(l) 6.E.2.Cons. de Vouch. 105. 5.E.3.67. 4.E.2.ibid.102.6.E.3.11. 50.7.E.3.6. 18.E.3.8. 22.E.3.3.3.H.7.13.6.H. 7.2.14.E.3. Gar.32. F.N.B. 134.g.5.E. 3.87.20.E.3.tit Counterplea de Gar.7.

(m) When Dower is assigned there is a warrantie in Law included, that the tenant in Dower being impleaded, shall vouch & recouer in value a third part of the two parts whereof she is dowable.

(m) 4.E.3.36. 33.E.3. tit.Cont.de Vouch. 122. 43.Ass.32. 50.E.3.7. F.N.B. 149.m.

And it is to be vnderstood, that a warrantie in Law and assets is in some cases a good bar.

(n) In a Formedon in the Discender the tenant may plead, that the ancestor of the Demandant exchanged the Land with the tenant for other Lands taken in exchange, which descended to the Demandant, whereunto he hath entred and agreed, or if he had not entred and agreed vnto the Lands taken in exchange, then the tenant may plead the warrantie in Law, and other assets descended.

(n) 14.H.6.2.15.E.3. Bar. 255.

(o) If tenant in taile of Lands make a gift in taile, or a Lease for life, rendring a rent, and dieth, and the Issue bringeth a Formedon in the Discender, the Reuersion and Rent shal not barre the Demandant, because by his Formedon he is to defeat the Reuersion and Rent, Et non potest adduci exceptio ejusdem rei, cujus petitur dissolutio.

(o) 38.H.3.22,23, 24. 13.E.3 Gar.35.

(p) But if other assets in Fee simple doe descend, then this warrantie in Law and assets is a good barre in the Formedon.

(p) 16 E.3.Age.45. 18.E.3.8. 31.E.3.Gar.29.

Here foure things are to be obserued: First, that no warrantie in Law doth barre any Collaterall title, but is in nature of a lineall warrantie: Wherein the equitie of the Law is to be obserued,

Secondly, That an expresse warrantie shall neuer binde the Heires of him that maketh the warrantie, vnlesse (as hath beene said) they be named: as for example, Littleton here saith (Ego & hæredes mei) but in case of warranties in Law, in many cases the Heires shall bee bound to warrantie, albeit they be not named.

Vide lib.4. fol.121. Bustards Case.

Thirdly, That in some cases warranties in Law doe extend to execution in value, of speciall Lands, and not generally of Lands descended in Fee simple, as you may see at large in my Reports.

(q) 45.E.3. 20.b.

(q) Fourthly, That warranties in Law may be in some cases created without Deed, as upon gifts in taile, Leases for life, Eschanges and the like.

And seeing somewhat hath beene said out of Bracton and other antient Authors, concerning assignees, it is necessarie to shew who shall take aduantage of a warrantie, as assignee by way of Voucher, to haue recompence in value.

(r) 14.E.3.Gar.33. 13.E.1 Gar.83.

(r) If a man infeoffe A. and B. to haue and to hold to them and their Heires, with a Clause of warrantie, Prædictis A.& B. & eorum hæredibus & assignatis: In this case if A. dieth, and B. suruiueth and dieth and the Heire of B. infeoffeth C. he shall vouch as assignee, and yet he is but the assignee of the Heire of one of them, for in iudgement of Law the assignee of the Heire is the assignee of the ancestor, and so the assignee of the assignee shall vouch in infinitum, within these words, (His assignes.)

Lib.5.fol.17.b.in Spencers case.38.E.3.21.

(f) If a man infeoffeth A. To haue and to hold to him, his Heires and assignes; A. infeoffeth B. and his Heires, B. dieth, the Heire of B. shall vouch as assignee to A. So as Heires of assignees, and assignees of assignes, and assignees of Heires are within this word (assignes) which seemed to be a question in Bractons time. And the assignee shall not only vouch, but also haue a Warrantia Cartæ.

(f) 12.E.2. Vouch.263. 19.E.2.Gar.85. 13.E.1.ib. 93. Lib.5.fol. 17.Spencers case.7.E.3.34. 10.E. 3.9.14 E.3. Gar. 33. Bract.ubi sup. 9.E.2. Gar. de Chart. 30. 36.E.3. Gar.104.H.8.Dy.1. F.N.B.135.

If a man doth warrant Land to another without this word (Heires,) his Heires shall not vouch: and regularly if he warrant Land to a man & his Heires, without naming assignes, his assignee shall not vouch. (t) But if the Father be infeoffed with warrantie to him and his Heires, the Father infeoffeth his eldest Son with warrantie and dieth, the Law giueth to the Sonne aduantage of the warrantie made to his Father, because by act in Law the warrantie betweene the Father and the Sonne is extinct.

(t) 43.E.3.23.26.E.3,68. 40.E.3.14. 24.E.3.3. 11.H.4.94. 30.E.3.17. 5.H.3.Age.19. Pl.Com. 418.

But note there is a diuersitie betweene a warrantie that is a Couenant reall, which bindeth the partie to yeeld Lands or Tenements in recompence, and a Couenant annexed to the Land, which is to yeeld but dammages, for that a Couenant is in many Cases extended further than the warrantie. As for example:

(u) 42.E.3.b.per Finchden.

(u) It hath beene adiudged, That where two Coparceners made partition of Land, and the one made a Couenant with the other, to acquite her and her Heires of a Suit that issued out

out of the Land, the Couenantée aliened. In that case the assignée shall haue an action of couenant, and yet he was a stranger to the Couenant, because the acquitall did runne with the Land.

(x) A, seised of the Mannor of D. whereof a Chappell was parcell, a Prior with the assent of his Couent couenanteth by Deed indented with A. and his heires to celebrate Diuine Seruice in his said Chappel weekely, for the Lord of the said Mannor, and his Seruants, &c. In this case the assignees shall haue an action of Couenant, albeit they were not named, for that the remedie by Couenant doth runne with the Land, to giue dammages to the partie grieued, and was in a manner appurtenant to the Mannor. (y) But if the Couenant had beene with a stranger to celebrate Diuine seruice in the Chappell of A. and his heires, there the assignée shall not haue an action of Couenant, for the Couenant cannot bee annexed to the Mannor, because the Couenantée was not seised of the Mannor. See in Spencers Case before remembred, diuers other diuersities betweene Warranties, and Couenants which yeeld but dammages.

(x) 42 E. 3. 3. 2. Laur. Parkenhams case. 2. H. 4. 6. 6. H. 4. 1. & 2. Ralfe Brabsons case. lib. 5. fol. 17. 18. Spencers case.

(y) 2. H. 4. 6. Hen. Hornes case. 6. H. 4. 1. Lib. 5. fol. 17, 18. Spencers case.

And here is to be obserued, that an assignee of part of the Land shall vouche as assignee, (z) as if a man make a feoffement in fee of two acres to one, with warrantie to him, his heires and assignes, if he make a feoffement of one acre, that Feoffee shall vouche as assignee for there is a diuersitie betweene the whole estate in part, & part of the estate in the whole, or of any part. As if a man hath a Warrantie to him, his heires, and assignes, and he make a Lease for life, or a gift in taile, the Lessee or Donee shall not vouch as assignee, because he hath not the estate in fee simple, whereunto the Warranty was annexed, but he Lessee for life may pray in aide, or the Lessee or Donee may vouch the Lessor or Donor, and by this meanes hee shall take aduantage of the Warranty. But if a Lease for life, or a gift in taile be made, the Remainder ouer in fee, such a Lessee or Donee shall vouch as assignee, because the whole estate is out of the Lessor, and the particular estate, and the Remainder doe in iudgement of Law to thi spurpose make but one estate.

(z) 18 E. 3. 51. 10 E. 3. 58. 5. E. 3. 40. 12. E. 3. Counterplea de Vouch. 42. 14. E. 3. Voucher. 108. 5. E. 3. ibid. 78. 13. E. 3. ibid. 119. 40. E. 3. 22. 41. E. 3. Vouch. 69. & 100. 32. E. 3. ibid. 96.
And this diversitie was agreed Hill. 14. Eliz. 1. Communi Banco, which I heard and obserued.

(a) If a man infeoffe three with Warrantie to them & their heires, and one of them release to the other two, they shall vouch, but if he had released to one of the other, the warrantie had beene extinct for that part, for he is an assignee.

(a) 40. E. 3. 14. 40. Ass. 5. 33. H. 6. 4. 37. 11. 8. Alienation sans licence 31. 8. H. 4. 8.

(b) If a man doth warrant Land to two men and there heires, and the one make a feoffment in fee, yet the other shall vouch for his moitie. If a man at this day be infeoffed with warranties to him, his heires, and assignes and he make a gift in taile, the Remainder in fee, the Donee make a feoffement in fee, that Feoffee shall not vouch as assignee, because no man shall vouch as assignee, but he that commeth in in priuitie of estate, but he must vouch his Feoffor, and he to vouch as assignee, but such an assignee may rebutte. If the Warrantie be made to a man his heires without this word (assignes) yet the assignee, or any tenant of the Land may rebutte. And albeit no man shall voch or haue a Warrantia cartæ, either as partie, heire, or assignee, but in priuitie of estate, yet any that is in of another estate, beit by Disseisin, abatement, intrusion, vsurpation or otherwise, shall rebutte by force of the Warrantie, as a thing annexed to the Land, which sometime was doubted (c) in our Bookes. But herein is a diuersitie to be obserued, when in the Cases afore said, he that rebutteth claimeth vnder the warrantie, and when he that would rebutte claimeth aboue the Warranty, for there he shall not rebutte. And therefore if Lands be giuen to two brethren in fee simple, with a warranty to the eldest and his heires, the eldest dieth without issue, the Surviuor albeit he be heire to him, yet shall he neither vouch nor rebutte, nor haue a Warrantia cartæ, because his title to the Land is by relation aboue the fall of the Warrantie, and he commeth not vnder the estate of him, to whom the Warrantie is made, as the Disseisor, &c. doth.

(b) 1 R. 2. Detin w. 46, 7. E. 3. 35. 46. E. 3. 4.

(c) 38. E. 3. 21. 26. E. 3. 56. Lib. 10 fo. 96. b. Sevmors case. 7. E. 3. 34. 35. 8. E. 3. 10. 46. E. 3. 4. 10. E. 3. 421. 45. E. 3. 18. 10. Ass. 5. 35. Ass. 9. 22. Ass. 39. 88. 31. Ass. 13.

(d) If a man make a gift in taile at this day, and warrant the Land to him, his heires and assignes and after the Donee make a feoffement and dieth without issue, the warrantie is expired as to any Voucher or Rebutter, for that the estate in taile whereunto it was knit is spent: otherwise it is, if the gift and feoffement had beene made before the Statute of Donis conditionalibus, for then both the Donee and Feoffee had a fee simple, and so are our Bookes to be intended in this and the like Cases.

(d) Lib. 1. fol. 62, 63. Lincolns College case.

(e) If A. be seised of Lands in fee, and B. releaseth vnto him or confirmeth his estate in fee with warrantie to him, his heires and assignes, all men agree this warrantie to be good: but some haue holden, that no warrantie can be raised vpon a bare Release or Confirmation without passing some estate or transmutation of possession. (f) But the Law, as it appeareth by Littleton himselfe, is to the contrary, and that both the party, and (as some doe hold) his assignee shall vouch, but he that is vouched in that case must bee present in Court, and ready to enter into the warranty and to answer, and the Tenant must shew forth the Deed of Release or Confirmation with warrantie, to the intent the Demandant may haue an answer thereunto, & either deny the Deed or auoid it, for that at the time of the Confirmation made, he to whom it was made, had nothing in the Land, &c. for otherwise the Demandant may counterplead the Voucher by the Statute of W. 1. viz. that neither Vouchee nor any of his Ancestors had any

(e) 14. E. 3. Garr. 108. 11. H. 7. 1.

(f) 11. H. 4. 22. 10. E. 3. 52. 21. E. 3. 27. Vid. Sect. 706. 738. & 745.

W. 1. cap. 40.

seisin whereof he might make a feoffement. And this is grounded vpon the said Statute of W.1. the words whereof be, Sil nait son garrantie en present, que lun voile garranter de long gree, & maintenant enter en respons, Otherwise Tenant must be driuen to his Warrantia cartæ.

Vide 20.E.1. Statute de vocat. ad warrant.

(g) But a Warrantie of it selfe cannot enlarge an estate, as if the Lessor by Deed release to his Lessee for life, and warrant the Land to the Lessee and his heires, yet doth not this enlarge his estate. *Rep. 10. fol: 97. Seymors case.*

(g) 22. H.6.15. 19.H.6. 73.20.H.6.73.2.H.4.13. 41.E.3.Garr.15. 43.E.3. 17.43.Ass.42.12.Ass.17. 12.E.3.taile 3, 22.E.4. 16.b.44.E.3.10.44. Ass. Bassingborns. Ass.lib.10. fol.97.Seymors Case.

(h) If a man make a feoffement in fee with warrantie to him, his heires and assignes by Deed (as it must be) and the Feoffee enfeoffeth another by parol, the second Feoffee shall vouche, or haue a Warrantia cartæ, (as hath beene said) as assignee, albeit he hath no Deed of the assignment, because the Deed comprehending the Warrantie, doth extend to the assignes of the Land and he is a sufficient assignee, albeit he hath no Deed.

(h) Lib.3.fol.63.Lincolne College Case.

(i) If a man infeoffe two, their heires and assignes, and one of them make a feoffement in fee, that Feoffee shall not vouch as assignee.

(i) 20.E.3.70. 7.E.2. Ioinder in action.1. 11.E.4.8.

If a man make a feoffment in fee to A. his heires and assignes. A. infeoffeth B. in fee, who re-enfeoffeth A. He or his assignes shal neuer vouche for A. cannot be his own assignee. But if B. had infeoffed the heire of A. he may vouche as assignee, for the heire of A. may be assignee to A. inasmuch as he claimeth not as heire.

(k) If a man make a feoffement by Deed of Lands to A. To haue and to hold to him and his heires, and bind him and his heires to warrant the Land In forma prædicta, this Warrantie shall extend to the Feoffee and his heires. But if he had warranted the Land to the Feoffee the Warrantie had not extended to his heires, except the words had beene to him and his heires.

(k) 14.H.4.3.

If a man letteth Lands for life, the Remainder in taile, the Remainder eadem forma, this is a good estate taile, quia idem semper refertur proximo præcedenti.

Sect. 734.

ITem si tenant en taile soit seisie des terres deuisables per testament solonque le custome, &c. et le tenant en tayle alien mesmes les Tenements a son frere en fee, et ad issue, et deuie, et puis son frere deuisa per son Testament mesmes les tenements a vn auter en fee, & oblige luy et ses heires a garrantie, &c. et mor. ust sans issue, il semble que cest garrantie ne barrera my lissue en tayle, sil voit sues son briefe de Formedon, **pur ceo que cest garrantie ne discend my al issue en le tayle, entant que le Uncle del issue ne fuit my oblige a le garrantie en sa vie: ne que il ne puisoit garranter les tenements en sa vie, entant que le deuise ne puisoit prender ascun execution ou effect, forsque apres son decease. Et entant que le Uncle en son vie ne fuit tenus de garanter, tiel garrantie ne poit discender**

ALso if tenant in taile be seised of Lands deuisable by testament after the custome &c. and the tenant in the tayle alienerh the same Tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth by his Testament the same tenements to another in fee, and bindeth him and his heires to Warrantie, &c. and dieth without issue, it seemeth that this Warrantie shall not barre the issue in the taile, if he will sue his Writ of *Formedon*, because that this Warrantie shall not descend to the issue in tayle, in so much as the Vncle of the issue was not bound to the same Warrantie in his lifetime: neither could hee warrant the Tenements in his life, insomuch as the Deuise could not take an execution or effect untill after his decease. And insomuch as the Vncle in his life was not

der de luy al issue en le taile, &c. car nul chose poit discender del aunceſter a ſon heire, ſinon que meſm̃ ceo fuit en launceſter.

held to warrantie, ſuch warrantie may not deſcend from him to the iſſue in the tayle, &c. for nothing can deſcend from the Anceſtour to his heire, unleſſe the ſame were in the Anceſtour.

Max.

CHere our Author declareth one of the Maxims of the Common Law, that the heire ſhal neuer be bound to any expreſſe Warrantie, but where the anceſtor was bound by the ſame Warranty, for if the anceſtor were not bound, it cannot deſcend vpon the heire, which is the reaſon here yelded by Littleton. (l) If a man make a Feoffement in fee, and binde his heires to Warrantie, this is void by the warrant of this Maxime, as to the heire, becauſe the anceſtor himſelfe was not bound. Alſo if a man binde his heires to pay a ſumme of money, this is void. And of the other ſide, if a man binde himſelfe to Warranty, and binde not his heires, they be not bound, for he muſt ſay, as it appeareth before, Ego & hæredes mei warrantizabimus, &c. (m) and Fleta ſaith, Nota quod hæres non tenetur in Anglia ad debita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus, præterquam debita regis tantum: A fortiori in caſe of warrantie, which is in the realtie.

(l) 31 E. 1. Grant. 85.

Bracton li. 2. fo. 37. 238. Britton fol. 106. b. (m) Fleta lib. 2 cap. 55. Britton fol. 65. b. 11. H. 6. 48.

But a Warrantie in Law may binde the heire, although it neuer bound the anceſtour, and may be created by a Laſt Will and teſtament. (n) As if a man deuiſe Lands to a man for life or in taile reſeruing a Rent, the Deuiſee for life or in taile ſhall take aduantage of this warrantie in Law, albeit the anceſtor was not bounden, and ſhall binde his heires alſo to Warrantie, although they be not named. Alſo an expreſſe Warrantie cannot be created without Deed, and a Will in writing is no Deed, and therefore an expreſſe Warrantie cannot be created by Will.

(n) 18. E. 3. 8.

Sect. 735.

AVry vn Garrantie ne poit aler ſolonq̃ la nature des tenements per le cuſtome, &c. mes tantſolement ſolonque le forme del Common ley. Car ſi le tenant en taile ſoit ſeiſie des Tenements en Burgh English, lou le cuſtome eſt, que touts les tenements deins meſm̃ le Borough deuoyent diſcender a le fits puiſne, et il diſcontinua le tayle oue garrantie, &c. & ad iſſue deux fits, a mourſt ſeiſie des auters terres ou Tenements en meſme le Burgh en fee ſimple a le value, ou pluis, de les Tenements tailez, &c. vncore le puiſne fits auera vn Formedon de les terres tailes, & ne ſerra my barr per le garrantie ſon pere, coment que Aſſets a luy diſcendiſt en fee ſimple ô meſme le pere, ſolonque le

ALſo a Warranty cannot goe according to the nature of the Tenements by the cuſtome, &c. but onely according to the forme of the Common Law. For if the Tenant in taile be ſeiſed of Tenements in Borough English, where the cuſtome is, that all the Tenements within the ſame Borough ought to deſcend to the youngeſt ſonne, and hee diſcontinueth the taile with Warranty, &c. and hath iſſue two ſonnes, and dyeth ſeiſed of other Lands or Tenements in the ſame Borough in fee ſimple to the value or more of the Lands entailed, &c. yet the youngeſt ſonne ſhall haue a *Formedon* of the Lands tailed, and ſhall not bee barred by the Warrantie of his father, albeit Aſſets deſcended to him in fee ſimple from his ſaid father

le cuſtome, &c. pur ceo que le garrantie diſcendiſt a ſon eigne frere que eſt en pleine vie, et nemy ſur le puiſne. Et en meſme le maner eſt de collateral garrantie fait de tiels Tenements, lou le garrantie diſcendiſt ſur leigne fits, &c. ceo ne barrera my le puiſne fits, &c.

according to the cuſtome, &c. becauſe the warranty deſcendeth upon his elder brother who is in full life, and not vpon the youngeſt. And in the ſame manner is it of collaterall warranty made of ſuch Tenements, where the warranty deſcendeth vpon the eldeſt ſonne, &c. this ſhal not barre the younger ſon, &c.

Sect. 736.

EN meſme le maner eſt de Tenements en le Countie de Kent, queux ſont appelles Gauelkind, les queux tenements ſont departibles enter les freres, &c. ſolonque la cuſtome, ſi aſcun tiel garrantie ſoit fait per ſon aunceſter, tiel garrantie diſcendera tantſolemẽt a lheire que eſt heire al common ley, ceſtaſcauoir al eigne frere, ſolonque la conuſans del common ley, & nemy a touts les heires queux ſõt heires de tiels tenements ſolonque le cuſtome.

IN the ſame manner it is of lands in the County of Kent, that are called Ganelkinde, which lands are diuidable betweene the brothers, &c. according to the cuſtome, if any ſuch Warrantie be made by his Anceſtor, ſuch Warrantie ſhall deſcend onely to the heire, which is heire at the Common Law, that is to ſay, to the elder brother, according to the conuſance of the Common Law, and not to all the heires that are heires of ſuch Tenements according to the cuſtome.

Vid. Sect. 603. 718. & 737.
(n) 11. E. 3. Dec. 7. 11. H. 7. 12.
(o) 17. E. 3. Ioint. 41. 16. H. 7. 13. 29. E. 3. 46. 21. H. 7. 3. 22. E. 3. 1. 17. E. 3. 8. 30. E. 3. 40. 19. H. 6. 55. lib. 3. fol. 14. Matthew Herberts caſe.

CHEreupon a diuerſitie is to be obſerued betweene the Lien reall, & the Lien perſonall. For the Lien reall, as the Warrantie, doth euer deſcend to the heire at the Common Law, (n) but the Lien perſonall doth binde the ſpeciall heires, as all the heires in Gauelkind, and the heire on the part of the mother, as hath beene ſaid. 376. or f. 718.

(o) If two men make a Feoffement in fee with a Warranty, and the one die, the Feoffee cannot vouche the ſuruiuor only, but the heire of him that is dead alſo, but otherwiſe if two ioyntly binde themſelues in an Obligation, and the one die, the ſuruiuor only ſhall be charged.

Sect. 737.

CItem, ſi tenant en le tayle ad iſſue deux files per diuers venters, & mozuſt, & les files entront, et vn eſtrange eux diſſeiſiſt de meſmes les tenements, et lun de eux releſſa per ſon fait a le Diſſeiſor tout ſon dzoit, & oblige luy et ſes heires a garrantie, et mozuſt ſans iſſue: en ceſt caſe la ſoer

ALſo if tenant in taile hath iſſue two daughters by diuers venters and dieth, and the daughters enter, & a ſtranger diſſeiſeth them of the ſame tenements, and one of them releaſeth by her Deed to the Diſſeiſor all her right, and binde her and her heires to warrantie, and die without iſſue: In this caſe the

ſoer que ſuruelquiſt poit bien enter & ouſter le Diſſeiſor de touts les Tenements, pur ceo que tiel garrantie neſt pas Diſcontinuance, ne collateral garrantie a la ſoer que ſuruelquiſt, pur ceo que ils ſont de demy ſanke, & lun ne poit eſtre heire a lauter, ſolonque le touts del Common Ley. Mes autrement eſt, lou y ſont files del tenant en taile per vn meſme venter.

ſiſter which ſuruiueth may well enter, and ouſt the diſſeiſor of all the Tenements, becauſe ſuch Warrantie is no Diſcontinuance nor collaterall Warrantie to the ſiſter that ſuruiueth, for that they are of halfe bloud, and the one cannot be heire to the other according to the courſe of the Common Law. But otherwiſe it is where there bee daughters of Tenant in taile by one venter.

¶ The reaſon of this is in reſpect of the halfe bloud, wherof ſufficient hath beene ſaid in the firſt Booke in the Chapter of Fee ſimple.

Two brethren be by demy venters, the eldeſt releaſeth with Warrantie to the Diſſeiſor of the Vncle, and dieth without iſſue, the Vncle dieth, the Warrantie is rendred, and the younger brother may enter into the Land.

Sect. 738.

¶ Item ſi tenant en taile leſſa les tenements a vn home pur terme de vie, le remainder a vn auter en fee, & vn Collateral Aunceſter confirma le eſtate del tenant a term de vie, & oblige luy & ſes heires a garrantie pur terme de vie del tenant a terme de vie & mozuſt, & le tenant en taile ad iſſue, & denie, oze liſſue eſt barre a demander les tenements per Briefe de Formedon, durant le vie le tenant a terme de vie per cauſe del collateral garrantie diſcendu ſur le iſſue en le taile. Mes apres le deceaſe de le

Alſo if Tenant in taile letteth the Lands to a man for terme of life, the Remainder to another in Fee, and a collaterall Anceſtor confirmeth the eſtate of the Tenant for life, and bindeth him and his heires to Warrãtie for terme of the life of the tenant for life, and dieth, and the Tenant in taile hath iſſue & dies, now the iſſue is barred to demand the Tenements by Writ of *Formedon* during the life of Tenant for life, becauſe of the collaterall Warrantie deſcended vpon the iſſue in taile. But after the deceaſe of the Tenant for life,

Vide Sect. 733, & 706.

¶ Here it appeareth, that a Warrantie may be raiſed by a Confirmation which tranſferreth neither eſtate nor right, wherof ſufficient hath beene ſaid before.

¶ *A Garrantie pur terme de vie, &c.* (p) This proueth that a warrantie may be limited, and that a man may warrant Lands aſwell for terme of life, or in taile, as in fee.

(n) 38. E. 3. 14. 26. E. 3. Vouch. 87.

If Tenant in fee ſimple that hath a Warrantie for life either by an expreſſe warrantie, or by Dedi, be impleaded and voueth, hee ſhall recouer a Fee ſimple in value albeit his Warrantie were but for terme of life, becauſe the Warrantie extended in that caſe to the whole eſtate of the Feoffee in Fee ſimple, but in the caſe that Littleton here puteth, the Tenant for life ſhall recouer in value but an eſtate for life, becauſe the warrantie doth extend to that eſtate only.

¶ *Vn Briefe de Formedon, &c.* Here is implyed that a Collateral warrantie

Warrantie giueth no right, but shall barre only for life, and after the partie is restored to his action.

tenant a terñ de vie, lissue auera vn Briefe de Formedon, &c.

the issue shall haue a Writ of *Formedon*, &c.

It is also to bee obserued,

That a Warrantie may descend to the Heires of him that made it during the life of another.

Sect. 739.

CEt sur ceo ieo aye oye vn reason, que cel case prouera vn auter case, s. si vn home lessa ses terres a vn auter, A auer & tener a luy & a ses Heires pur terme dauter vie, & le Lessee morust viuant celuy a que vie, &c. & vn Estrange enter en la Terre, que le Heire le Lessee luy poit ouster, &c. pur ceo que en le case prochein auantdit, entant que home poit obliger luy & ses Heires a Garrantie al Tenant a terme de vie tantsolement durant la vie le Tenant a terme de vie, & cel Garrantie discendist al Heire celuy, que fist le Garrantie, le quel Garrantie nest pas Garrantie denheritance, mes tantsolement pur terme dauter vie: per mesme le reason lou Tenements sons lesses a vn Home, A auer & tener a luy & a ses Heires, pur terme dauter vie, si le Lessee morust, viuant celuy a que vie, son Heire auera les Tenements, viuant celuy a que vie, &c. Car ont dit, que si hom̃ grant vn annuitie a vn auter, A auer & perceiuer a luy & a ses Heires pur terme dauter vie, si le grantee morust, &c. que apres son mort son Heire auera lannuitie durant la vie celuy a que vie, &c. Quære de ista materia.

ANd vpon this I haue heard a reason, That this Case will proue another Case, *viz.* If a man letteth his Lands to another, To haue and to hold to him and to his Heires for terme of anothers life, and the Lessee dieth, liuing *Celuy a que vie, &c.* and a stranger entreth into the land, that the Heire of the Lessee may put him out, &c. because in the case next aforesaid, in asmuch as a man may binde him and his Heires to Warrantie to Tenant for life only, during the life of the Tenant for life, and this Warrantie descendeth to the Heire of him which made the Warrantie, the which Warrantie is no Warrantie of Inheritance, but only for terme of anothers life. By the same reason where Lands are let to a man, To haue and to hold to him and his Heires for terme of anothers life, if the Lessee die, liuing *Celuy a que vie*, his Heires shall haue the Lands, liuing *Celuy a que vie, &c.* For they haue said, That if a man grant an Annuitie to another, To haue and to take to him and his Heires for terme of anothers life, if the Grantee die, &c. That after his death his Heire shall haue the Annuitie during the life of *Celuy a que vie, &c.* *Quære de ista materia.*

¶ *Eo ay oye vn reason.* Here our Student is taught after the example of our Author, to obserue euery thing that is worth the noting.

¶ *Si un home lessa terres a vn auter, &c.* This case is without question, (q) That the Heire of the lessee shall haue the Land to preuent an Occupant. And so it is (as Littleton here saith) in case of an Annuitie, or of any other thing that lieth in Grant, whereof there can be no Occupant. And of this somewhat hath beene said in the Chapter of Discents.

(q) 17.E.3.48. 18.E.3.12. 11.H.4.42. 7.H.4.46. 8.H.4. 15.Dy. 8.El.253. 18.H.8.3 27.H.8.21.H.8 tit. Estat.Br.10. 19.E.3 tit. Account. 56. 33.Ass. p.17. 22.H.6.32.39.E.3. 37.Vide Sect.387.

Sect. 740.

¶ MEs lou tiel Leale ou Grant est fait a vn hom & a ses Heires pur terme dans, en cest Case lheire le Lessee ou le grātee nauera vnques aps la mort l' Lessee, ou le Grantee ceo que est issint lesse ou grant, pur ceo q̄ est Chattel real, & chateux realx p̄ l' common ley viendra al executors ōl Grantee, ou del Lessee, & nemy al Heire.

BUt where such lease or Grant is made to a man and to his heires for terme of yeares; In this case the Heire of the lessee or the grantee shall not after the death of the Lessee or the Grātee haue that which is so let or granted, because it is a Chattell reall, and Chattells reals by the Common Law shall come to the Executors of the Grantee, or of the Lessee, and not to the Heire.

11.E 3.tit.Ass 88. 11.Ass.11.10.El.Dy.276. 1 19.

¶ HEre is a general rule, That Chattels reals aswell as Chattels personals shall goe to the Executors or Administrators of the Lessee, and not to his Heires. For as Estates of Inheritance or Freehold discendible shall goe to the Heire, so Chattels, aswell reall as personall, shall goe to the Executors or Administrators.

(r) But if the Kings Tenant by Knights Seruice in capite be seised of a Mannor, whereunto an Aduowson is appendant, and the Church become void, the Tenant dieth, his Heire within age, the King shall present to the Church, & not the Executor or Administrator: but if the Land bee holden of a common Person, in that Case the Executor shall present, & not the Gardeine.

(r) 24.E.3.26. F.N.B.33.b. F.N.B.34. a

(f) If a Bishop hath a ward fallen and dieth, the King shall not haue the Ward nor the Successor, but the Executor, & the Ward shall be Assets in his hands. So it is of Heriot, Releefe and the like. (t) But if a Church become void in the life of a Bishop, and so remaine vntill after his decease, the King shall present thereunto, and not the Executor or Administrator, for nothing can be taken for a presentment, and therefore it is no assets.

(f) 40.E.3.14.

(t) 9.H.6.58. 11.H.4.7.

Sect. 741.

¶ ITem, en ascūs Cases il poit estre, que coment que vn collaterall Garrantie soit fait en Fee, &c. vncore tiel Garrantie poit estre defeat, & anient. Sicome te-

ALso in some cases it may bee, That albeit a collateral warrantie be made in Fee, &c. yet such a Warrātie may be defeated and taken away: As if Tenant in Taile discontinue the Taile

¶ *Et moruit sans Issue, &c.* Here (as before in this Chapter hath beene noted) the Collaterall Warrantie doth descend vpon the Issue in Taile, before any right doth descend vnto him, wherein this Diuersitie is to bee obserued: Where the right is in esse in any of the Ancestors of the Heire, at the time of the Wis-

Vide Sect. 707.

cent of the Collaterall warrantie, there albeit the warrantie descend first, & after the right doth descend, the Collatcrall warrantie shall binde, as here in this case of our author expressely appeareth. But where the right is not in esse in the Heire, or any of his ancestors, at the time of the fall of the warrantie, there it shall not binde.

(u) As if Lord and Tenant bee, and the Tenant make a Feoffment in Fee with warrantie, and after the Feoffee purchase the Seigniorie, and after the Tenant cease, the Lord shall haue a Cessavit, for a warrantie doth extend to rights precedent, and neuer to any right that commenceth after the warrantie, whereof more shall be said in this Section. Also a warrantie shall neuer barre any estate that is in possession, reuersion or remainder, that is not deuested, displaced, or turned to a right before, or at the time of the fall of the warrantie. 8.H.10. fol. 97.

(w) If a Lease for life bee made to the Father, the Remainder to his next heire, the Father is disseised and releaseth with warrantie and dieth, this shall barre the Heire, although the warrantie doth fall, and the remainder commeth in esse at one time.

(y) If there be Father and Sonne, and the Sonne hath a Rent seruice, Suit to a Mill, Rent charge, Rent Seeke, Common of pasture, or other profit apprender out of the Land of the father, and the father maketh a feoffement in fee with warrantie, and dieth, this shall not barre the sonne of the Rent, Common, or other profit apprender, quamuis clausula specialis Warrantie vel Acquietancie in cartis tenentium inseratur, quia in tali casu transit terra cum onere; and he that is in seisin or possession need not to make any Entrie or Claime: and albeit the sonne after the Feoffement with warrantie, and before the death of the father had beene disseised, and so being out of possession, the warrantie descended vpon him, yet the warrantie should not binde him, because at the time of the warrantie made, the sonne was in possession. (*) So if my Collaterall ancestor release to my tenant for life, this shall not binde my Reuersion or Remainder, because that the Reuersion or Remainder continued in me. But if he that hath a Rent, common, or any profit out of the Land in taile, disseise the tenant of the land, and maketh a feoffment of the land, and warrant the land to the feoffee and his heires, (a) regularly the warrant doth extend to all things issuing out of the Land, that is to say, to warrant the Land in such plight & manner, as it was at in the hand of the feoffor, at the time of the feoffement with warrantie, and the Feoffee shall vouch, as of Lands discharged of the Rent, &c. at the time of the feoffment made.

A woman that hath a Rent charge in fee entermarieth with the tenant of the Land, an estranger releaseth to the tenant of the Land with warrantie, he shall not take aduantage of this warrantie either by Voucher or Warrantia cartæ, for the wife, if her husband die, or the heire of the wife liuing the husband, cannot haue an action for the Rent vpon a Title before the

(n) 7.E.3.48.30.H.8.42.

(w) Lib.1. fol. 67. Archers case.

(y) Temps E.1. Voucher 296. 31.Ass.13.22.Ass.36. 41.Ass.6. 13.E.3. tit.Gar. 74.lib.10.fol.97. E.Seymors case.

(*) 45.E.3.31. 21.H.7.11

Vide Sect. 698.

(a) 21.E.4.26. 21.H.7.9. 3.H.7.4. 7.H.4.17. 30.H.8.Dier.42. 30.E.3.30. 9.E.3.78. 45.E.3. Voucher 72. F.N.B. 135. 14.H.8.6.

nant en taile discontinue le taile en fee, & le discontinuee est disseisie, & le frere del tenant en le taile releasa per son fait a le Disseisor tout son droit, &c. oue garrãtie en fee, & morust sans issue, & le tenant en le taile ad issue & deuie, ore lissue est barr̃ de son action per force d̃ collateral garrantie discendue sur luy: mes si apres ceo le Discontinuee enter sur le disseisor, donqs poit lheire en le taile auer bien son action de Formedon, &c. pur ceo que le garrantie est aniente & defeat, car quant garrantie est fait a vn home sur estate que adonques il auoit, si lestate soit defeat le garrantie est defeat.

in Fee, and the Discontinuee is disseised, and the brother of the Tenant in Taile releaseth by his Deed to the Disseisor all his right, &c. with Warrãtie in Fee, and dieth without issue, and the Tenant in taile hath issue and die, now the issue is barred of his action by force of the collaterall Warrantie descended vpon him. But if afterwards the Discontinuee entreth vpon the Disseisor, then may the Heire in taile have well his action of *Formedon*, &c. because the Warrantie is taken away & defeated, for when a warrantie is made to a man upon an estate which he then had if the estate bee defeated the Warrantie is defeated.

the Warrantie made, for if the heire of the wife bring an Assise of Mordanceſter, this action is grounded after the Warrantie, whereunto as hath beene ſaid, the Warrantie ſhall not extend.

So it is if the Grantee of the Rent grant it to the Tenant of the Land vpon condition, which maketh a feoffment of the Land with Warrantie, this Warrantie cannot extend to the Rent, albeit the feoffment was made of the Land diſcharged of the Rent, for if the condition be broken, and the Grantor be intituled to an action, this muſt of neceſſitie bee grounded after the Warrantie made.

But in the caſe aforeſaid when the woman Grantee of the rent marrieth with the Tenant, and the Tenant maketh a feoffment in fee with warrantie, and dieth, in a Cui in vita brought by the wife (as by law ſhe may) (b) the Feoffee ſhall vouche as of Lands diſcharged at the time of the Warranty made for that her title is Paramount, ſoit tenant in taile of a Rent charge purchaſe the Land, and make a feoffment with warrantie, if the iſſue bring a Formedon of the Rent, the Tenant ſhall vouche Cauſa qua ſupra.

(b) 7.H.4. 17.

(*) But ſome doe hold, that a man ſhall not vouche, &c. as of Land diſcharged of a Rent Seruice.

(*) 10.E.4.9. b. 18.E.3. 55. 44.E.3 19.

(c) Alſo no warrantie doth extend vnto meere and naked Titles, as by force of a condition with clauſe of Re-entry, Exchange, Mortmaine, conſent to the tauiſher and the like, becauſe that for theſe no action doth lye, and if no action can be brought, there can be neither Voucher, writ of Warrantia cartæ, nor Rebutter, and they continue in ſuch plight and eſſence as they were by their originall creation, and by no act can be diſplaced or deueſted out of their originall eſſence and therefore cannot be bound by any warrantie.

(c) Lib.10. fol.97. E. Stymores caſe. 22.Aſſ.pl.38.31.Aſſ.p.13 41.Aſſ.p.6. 33. E.3. Gar.74.

(d) And albeit a woman may haue a writ of Dower to recouer her Dower, yet becauſe her title of Dower cannot be deueſted out of the originall eſſence, a collaterall warrantie of the anceſtor of the woman ſhall not barre her. So it is of a feoffment Cauſa matrimonii prælocuti.

(d) 34.E.3. tit. droit. 72. 21.E.4.82.

(e) A warrantie doth not extend to any Leaſe, though it be for many thouſand yeares, or to eſtates of Tenant by Statute Staple, or Marchant, or Elegit, or any other Chattle, but only to Freehold or Inheritances, as it appeareth in all Littletons Caſes, which he putteth in this Chapter. And this is the reaſon, that in all actions which Leaſe for yeares may haue, a warrantie cannot be pleaded in barre, as in an action of Treſpaſſe, or vpon the Statute of 5.R.2. and the like. But in thoſe actions when the Freehold or Inheritance doe come in queſtion, there the warrantie may be pleaded. But in ſuch actions which none but a Tenant of the Freehold can haue, as vpon the Statute of 8.H.6. Aſſiſe, or the like, there a warrantie may be pleaded in barre.

(e) 21.E.4.18.82.1 H.7. 12.22. 11.H.7.15,16. 20.H.7.2.b. 14.H.7.22. 43.E.3.25. per Finch. in quar. Imp. 15.H.7.9.lib. 20. fol.97.

¶ *Quant Garrantie eſt fait a vn home ſur eſtate, que adonques il auoit, ſi leſtate ſoit defeat, le Garrantie eſt defeat.* Here it appeareth, that although a collaterall warrantie be deſcended, (f) yet if the ſtate whereunto the warrantie was annexed be defeated, albeit it be by a meere ſtranger, (as in this caſe that Littleton here put by the Diſcontinuee) the warrantie is defeated, and although the Diſcontinuance remaine, and no remitter wrought to the heire, yet the warrantie is defeated, and barre remoued, ſo as the iſſue in taile may haue his Formedon, and recouer the Land, Sublato principali tollitur adiunctum.

(f) 3.H.7.9.b. 16.E.3. tit. Continual Claime 16. 9 H.4.8.Pl.Com 158.

Sect. 742.

¶ EN meſme le manner eſt, ſi le diſcontinuee fait feoffement en fee, reſeruant a luy vn certaine Rent, & pur default de payment vn re-entry, &c. & vn collateral Garrantie de anceſter eſt fait a celuy feoffee que ad eſtate ſur condition, &c. & mourust ſans iſſue, coment que cel Garrantie diſcendet ſur liſſue en taile, vncore ſi apres le rent ſoit aderet & le diſ-

IN the ſame maner it is, if the diſcontinuee make a feoffmēt in fee, reſeruing to him a certain rent, & for default of payment a re-entrie, &c. and a collaterall Warrantie of the Anceſtour is made to the Feoffee that hath the eſtate vpon condition, &c. and dieth without iſſue, albeit that this warranty ſhall deſcend vpon the iſſue in taile, yet if after the rent be behinde, and the

discontinuee entra en la terre, adonqz auera lissue en taile son recouery p̄ briefe de Formedon, pur ceo q̄ le collateral garranty est defeat. Et issint si alcun tiel collateral garranty soit pleð enuers lissue en l' taile, en son action ð Formedon, il poit mẽer l' matter cõ est auantdit, coment le garrantie est defeat, &c. & issint il poit bien maintener son action, &c.

discontinuee enter into the Land, then shall the issue in taile haue his recouery by writ of *Formedon*, because the collaterall warrãty is defeated. And so if any such collaterall warrantie bee pleaded against the issue in taile in his actiõ of *Formedon* he may shew the matter as is aforesaid, how the Warrantie is defeated, &c. and so hee may well maintaine his action, &c.

Max. HEre Littleton putteth another case vpon the same ground and reason, viz. where the state whereunto the Warrantie is annexed, is defeated, there the Warrantie it selfe is defeated also, which is one of the maximes of the Common Law.

Sect. 743.

ITem, si Tenant en tayle fait vn feoffment a son vncle, & puis luncle fait vn feoffement en fee ouesque garrantie, &c. a vn auter, & puis le feoffee del vncle enfeoffa arere-maine luncle en fee, & puis luncle enfeoffa vn estrange en fee sans garrantie & mozust sauns issue, & le Tenant en tayle mozust, si issue en l' taile voyle pozt̄ son bt̄ de Formedon, enuers lestrange que fuit le darrein feoffee, & ceo per luncle, lissue ne serra vnque barre per le garrantie que fuit fait per le vncle al dit p̄mer feoffee de son vncle, pur ceo que le dit garrantie fuit defeat & anient, pur ceo que luncle a luy reprist cy grand estate de son p̄mer feoffee a que le garrantie fuit fait, sicome ñ l' feoffee auoit de luy. Et la cause pur que le garrantie est anient en ceo cas, est ceo, ſ. que si le garrantie estoieroit en sa force, donque luncl' garrantet̄ a luy meſm̄, que ne poit estre.

ALso if Tenant in taile make a feoffement to his vncle, and after the vncle make a feoffemẽt in fee with warranty, &c. to another, and after the feoffee of the Vncle doth re-enfeoffe againe the Vncle in fee, and after the Vncle enfeoffeth a stranger in fee without warrantie, and dieth without issue, and the Tenant in tayle dieth, if the issue in taile will bring his Writ of *Formedon* against the stranger that was the last feoffee, and that by the Vncle, the issue shall not be barred by the warranty that was made by the Vncle to the first feoffee of his Vncle, for that the said warrantie was defeated and taken away, because the vncle tooke backe to him as great an estate from his first feoffee to whom the warrantie was made, as the same feoffee had from him. And the cause why the Warranty is defeated, is this, *viz.* that if the Warrantie should stand in his force, then the Vncle should warrant to himselfe, which cannot be.

Here

HEre Littleton putteth another case, where a Warrantie may be defeated, as when the Vncle taketh backe as large an estate, as he had made, the warrantie is defeated, because hee cannot warrant Land to himselfe. (g) And so it is if the Vncle had made the Warrantie to the Feoffée his heires and assignes, and taken backe an estate in fee and after infeoffed another, yet the warrantie is defeated, for that he cannot be assignée to himselfe, and a man shall not regularly vouche himselfe as assignée of a fée simple, and the Law will not suffer things inutile and vnprofitable. (h) And yet if the father be infeoffed with Warrantie to him and his heires, the father infeoffeth his heire apparant in fée and dieth, he (as it hath béene said) shall vouch himselfe, and the heire in borow English by reason the act in Law determined the Warrantie betweene the father and the sonne.

(i) But if a man maketh feoffement in fée with warrantie to the Feoffée his heires and assignes, and the Feoffée re-enfeoffeth the Feoffor and his wife, or the Feoffor and any other stranger, the Warrantie remaineth still, or if two doe make a feoffment with Warrantie to one and his heires and assignes, and the Feoffée re-enfeoffe one of the Feoffors, the Warrantie doth also remaine.

(g) Temps E.1. Voucher 266. 40.E.3.14. 43.E.3. 38. 25.E.3.43 b. 26.E.3. 68. 14.E.3.Vouch. 106. 16 E.3.Vouch 87. 19.E.3. Vouchee 122. 17.E.3.73, 74. 24.H.6.29.

(h) 40.E 3.14.a. 41.E.3. 25 a.

(i) 11.H.4.20.42. 17 E.3. 47.59. 18.E.3.56. 29 E. 3.46. 39.E.3.9.

Sect. 744.

CMes si le feoffee fesoit estate al vncle p̃ term̃ de vie, ou en taile, sauant le reuersion, &c. ou que il fait done en taile al Vncle, ou vn leas pur term̃ de vie, le remainder ouster, &c. en cest cas le garrantie nest pas tout oustement anient, mes est mis en suspence durant lestate que Luncle ad. Car apres ceo que luncle est mort sans issue, &c. donques celuy en le reuersion, ou celuy en le remainder barreroit lissue en tayle en son briefe de Formedon per le collateral garranty en tiel cas, &c. Mes autrement est lou luncle auoit aury graund estate en la terre de le Feoffee, a que l' Gar-

BVt if the Feoffee had made an estate to his vncle for terme of life, or in taile, sauing the reuersion, &c. or a gift in tayle to the Vncle, or a Lease for terme of life, the Remainder ouer, &c. In this case the warrantie is not altogether taken away, but is put in suspéce during the estate that the Uncle hath. For after that, that the vncle is dead without issue, &c. then he in the Reuersion, or he in the Remainder shall barre the issue in tayle in his Writ of *Formedon* by the collaterall warranty in such case, &c. But otherwise it is where the vncle hath as great estate in the Land of the Feoffee to whom the Warrantie was made, as the Feoffee.

C*Vr terme de vie, ou en taile.* Here it appeareth (k) that by taking a (l) Lease for life, or a gift in taile, the warrantie is suspended.

A man infeoffeth a woman with Warrantie, they intermarry & are impleaded, vpon the default of the husbād, the wife is receiued, she shal vouch her husband, &c. notwithstanding the Warranty was put in suspence. (m) And so on the other side, if a woman infeoffe a man with Warrantie, and they intermarry & are impleaded, the husband shall vouche himselfe and his wife by force of the said Warrantie.

(n) An infant en vent̃ sa mere may be vouched if God giue him a birth, and if not such a one heire to the Warrantie, but he cannot bee vouched alone without the heire at the Common Law, for Prraces shall be presently awarded against him.

(k) 16 E.3. Vouch. 87. 44.E.3.38. 26.E.3.56. 17.E.3.47. 10.E.3.30. 12.E.3. Counterplea de Vouch.42. 14.E.3 ib 12.

(l) 6.E.2. Vouch. 257. 3.E.3 ibid.201. 5.E.3 ib. 171. 18.E.3.52. 14.E.3. Vouch.109. 31 E.3.ib.25 43.E.3.7. 44.E.3.38. 32.E.3.Voucher 102.

(m) 4.E.2. Voucher 243. 246.

(n) Temps E.1. Gard.1.3 31.E.1.Briefe 873. 8.E.2. Vouch.237. 11.E.3.ib.13 11 E.3.quar. imp.358. 38.E.3.7.& 29. 41.E.3. in Dower. 9 H.6.24.Pl. Com. Stowels case per Saunders & Browne,

C*Mes est mise en suspence.* (o) Tenant in Tayle maketh a feoffment in fée with Warrantie, and disseiseth the Discontinuee, and dyeth seised, leauing assets to his issue. Some hold that in respect of this suspended warrantie and assets, the issue

(o) 21.E.3.36. 2.& b. 38.E.3.21. 44.E.3.26. 45.E.3.Title 32.44.E.3. ibid.31. 33.E.3.ibid.4.

issue in taile shal not be remitted, but that the Discontinuée shall recouer against the issue in taile, & he take aduantage of his warrantie, if any bée hath, and after in a Formedon brought by the issue, the Discontinuée shall barre him in respect of the Warrantie and assets, and so euery mans right saued.

rantie fuit fait, come le Feoffee auoit de luy, Causa patet. hath himselfe. *Causa patet.*

Sect. 745.

Sect. 733. 706.

COVR release fait per luy oue garrãtie. Note a Warrantie grounded vpon a Release. Hereof you shall reade before in this Chapter.

8. E. 2. Voucher. 237.

¶ *Soit attaint de felony, ou vtlage, &c.* Note according to Littleton here, there be two manner of Attainders, the one is after apparance, and that in three manners, by Confession, by Battell, or by Verdict, the other vpon Proces to bée Outlawed, which is an attainder in Law. But (as hath béene said) there is a great diuersitie, as to the forfeiture of Land, betweene an Attainder of felony by Outlawry vpon an Appeale, & vpon an Inditement: for in the case of an Appeale, the Defendant shall forfeit no Lands, but such as he had at the time of the Outlawrie pronounced, but in case of Inditement, such as hée had at the time of the felony committed, and the reason of this diuersitie is euident, for that in the case of Appeale there is no time alleaged in the Writ when the felony was done, & therefore of necessitie it must relate in that case only to the iudgement of the Outlawry: but in the case of Inditement, there is a certaine time alleaged, and therefore in that case it shall relate to the time alleaged in the Inditement when the felony was committed. But in the case of the Inditement there is also a diuersitie to be obserued, (o) for as hath béene said, it shall relate to the time alleaged in the Inditement for auoyding of estates, charges, and incumbrances, made by the Felon after the felony committed, but for the meane profits of the Land it shal relate onely to the iudgement, as well in this case of Outlawrie, as in other cases. And where Littleton saith (Attaint de felony) if a man bee conuicted of felony by Verdict, and deliuered to the Ordinary to make Purgation (p) hee cannot bee Vouched, for that the time of his Purgation (if any should bée) is vncertaine, and the Demandant cannot bee delayed vpon such an vncertaintie, but the Tenant is not without remedie, for hee may haue his Warrantia cartæ.

(o) 33. E. 3. Forfeiture 30. 38. E. 3. 31. 3. E. 4. 25. 19. E. 4. 2. Pl. Com. 488. b.

(p) 8. E. 2. Voucher 237. Vid. 38. E. 3. 29. b Simile.

¶ *Attaint.* Of this word hath béene spoken in the second Booke in the Chapter of Villenage.

Upon seuerall Attainders of Felonies, there lye three seuerall Writs of Escheate, viz. (*) First, when he hath iudgement to be hanged. Secondly, when he is Outlawed. Thirdly, when he abiureth the Realme.

(*) Dame Hales case in Pl. Com. fol. 262.

(q) 8. E. 3. Iudgem. 225.

(q) The Defendant in an Appeale of death did wage battell, and was slaine in the field, yet iudgement was giuen that he should bée hanged, and the Iustices said that it is altogether necessarie, that such a Iudgement be giuen, for otherwise the Lord could not haue a writ of Escheate (r) And in Eire it hath béene séene, that a man hath béene attainted after his death by presentment, &c. The difference betweene a man attainted and conuicted, is, that a man is said conuict before hee hath iudgement, as if a man bée conuict by confession, Verdict, or Recreancie. And when he hath his iudgement vpon the Verdict, confession, or Recreancy,

(r) 15. E. 3. Petition 27.

¶ *Item, si luncle apres tiel feoffement fait oue Garrantie, ou release fait p luy oue Garranty soit attaint de felony, ou vtlage de felony, tiel collaterall Garrantie ne barret my, ne greeuera, lissue en le taile, pur ceo que per le attainder de felonie, le sanke est corrupt enter eux, &c.*

ALso if the uncle after such feoffemẽt made with Warrantie, or a release made by him with Warrãty, be attaint of felony, or outlawed of felony, such collaterall Warrantie shal not bar nor grieue the issue in the taile, for this that by the attainder of felony, the bloud is corrupted betweene them, &c.

Recreancie, or vpon the Outlawrie, or abiuration, then is he said to be attaint. And thus is the Law taken at this day notwithstanding (r) some diuersitie of opinions in our Bookes.

If a Felon bee conuicted by Verdict, Confession, or Recreancie, he doth forfeit his goods and Chattels, &c. presently. (t) For where a reason hath beene yelded in our Bookes, that the praying of his Clergie, was a refusall of the iudgement of the Law, and a slight in Law, and for that cause he forfeited his goods and Chattels, that doth not hold, for if a man be conuict of petite Treason, or Murder, or any other crime, for which he cannot haue his Clergie, yet by the verie Conuiction he forfeiteth his goods and Chattels before attainder. And (u) Stanford (speaking of a Felon conuict by Verdict) saith, that he shall forfeit his goods, which he had at the time of the Verdict giuen, which is the Conuiction in that case, and by the Statute of 1. R. 3. cap. 3. no Sheriffe, Bayliffe, &c. shall seise the goods of a Felon before hee bee conuicted of the Felony, whereby it appeareth that the goods may be seised as forfeit after conuiction. And the (x) old Statutes is worthy of noting. Prouisum est in curia nostra coram Iusticiariis nostris, quod de cetero nullus homo captus pro morte hominis vel alia felonia pro qua debet imprisonari, dificisietur de terris & tenementis vel catallis suis quousque conuictus fuerit. So as by a Conuiction of a Felon, his goods and Chattels are forfeited, but by attainder, that is by Iudgement giuen, his Lands and Tenements are forfeited, and his bloud corrupted and not before.

(y) If the partie vpon his arraignment refuse to answer according to Law, or say nothing, he shall not be adiudged to be hanged, but for his contempt, to paine fort & dure, which worke no attainder for the Felony, nor forfeiture of his Lands or corruption of bloud. But in case of High Treason, if the partie refuse to answer according to Law, or say nothing, hee shall haue such iudgement by attainder, as if he had been conuicted by verdict or confession.

(r) 40.E.3.12. 3.E.3. Corone.65. 8.E.2.ibid. 291. 21.H.7.

(t) Dame Hales case. Vbi supra. 8.H.4.2.

(u) Stanf. Pl.cor. fol.192. Lib.5.fol. 110. Foxleyes case. Vide 7.H.4.11. 1.R.3.cap.3.

(x) Statute de catallis felonum ver. Magna Carta, fol 66.2.part.

(y) Stanf. Pl. Cor. 139. 185.

¶ *Felony.* (*) Ex vi termini significat quodlibet capitale crimen felleo animo perpetratum, in which sense Murder is said to be done per feloniam, and is so appropriated by Law, as felonicè cannot be expressed by any other word. (a) And in antient times this word (felonicè) was of so large an extent as it included High Treason, and therefore in our ancient Bookes, by the pardon of all Felonies, High Treason, or counterfeiting of the Great Seale, and of the Kings Coine, &c. was pardoned. (b) But afterwards it was resolued, that in the Kings Pardon or Charter, this word (Felonie) should only extend to common Felonies, and that High Treason should not be comprehended vnder the same, & therefore ought to be specially named; And yet that a pardon of all Felonies should extend to petite Treason, wherefore by the Law at this day vnder the word (Felony) in Commissions, &c. is included petite Treason, Murder, Homicide, burning of Houses, Burglarie, Robberie, Rape, &c. Chance-medly, se defendendo, and petite Larceny. (c) For such of these crimes for the which any shall haue this Iudgement, to be hanged by the necke till he be dead, he shall forfeit all his Lands in Fée simple, and his goods and Chattels: for Felony by Chance-medly, or se defendendo, or petite Larceny, he shall forfeit his goods & Chattels, and no Lands of any estate of Fréehold or Inheritance. And all Felonies punishable according to the course of the common Law, are either by the common Law, or by Statute. There is also a Felony punishable by the ciuill Law, because it is done vpon the high Sea, as Pyracie, Robberie, or Murder, whereof the common Law did take no notice, because it could not bee tried by twelue men. If this Pyracie bee tried before the Lord Admirall in the court of the Admiraltie, according to the ciuill Law, and the Delinquents there attainted, yet shall it worke no corruption of bloud, nor forfeiture of his lands, otherwise it is if he be attainted before commissioners by force of the Statute of (d) 28.H.8. By the expresse purview of that Statute about the end of the reigne of Quéene Elizab. certaine English Pyrats that had robbed on the Sea Merchants of venice in amitie with the Quéene being not known, obtained a Corronation pardon, whereby amongst other things the King pardoned them all Felonies. It was (e) resolued by all the Iudges of England vpon conference & aduisement, that this did not pardon the Pyracie, for seeing it was no Felonie whereof the common Law tooke conusance, and the statute of 28.H.8. did not alter the offence, but ordaine a triall and inflict punishment, therefore it ought to bée pardoned specially, or by words which tant amount, and not by the generall name of Felony, and according to this resolution the Delinquents were attained and executed.

Pyrat cõmeth of the word πυρόω, which signifieth a Robber at Sea. Attainder of heresie, or Præmunire worketh no corruption of bloud, nor heresie, forfeiture of lands, but in case of Præmunire, forfeiture of lands in fée simple, but not of lands in taile, as formerly hath been said. (f) By some Statutes it is said, Sur forfeiture de corps & de auoire, or Sub forisfactura omnium quæ in potestate sua obtinet, or to be at the Kings will, body, lands and goods, and the like, these are not extended to the losse of life or member, but to imprisonment, lands and goods. (g) But if an act of Parliament saith, Eeit judgement de vie & member, or subeat iudicium vitæ vel membrorum, in that case iudgement of death shall be giuen, as in case of Felonie, viz. that he be

(*) Glanuil lib.14.ca.15. Malbr.ca.251 W.1.ca.15.

(a) 2.E.4.14. 18 E.4.10. 23.Ass.49. 1.E.3.13. Stanf.Pl.Cor.102.E. 8.H.4.2.

(b) 22.Ass.49.

(c) Stanf. prær. 45. b. 16.E.3.Coron. 116. & 3 E.3.Coron.302.

(d) 28.H.8. cap.15.

(e) Hill.2.Jac.Regis.

Vide Mich.7. & 8.Eliz. Dier.241. 14.Eliz.Dier.308.

(f) Statute de Magna moneta tempore E.1. 35.E.1. de Carlisle. 20.E.3. cap.4.

(g) W.2.ca.34. Rot.Parl. 25.E.1. 1.E.2.de frang. prisonam.14.E.3.cap.10. Stanf.Pl.Coron.30,31. 3.E.3. Coron. 153. Brooke tit.Coron.103. 9.E.4.16.

hanged by the necke till hee bee dead, & consequently his bloud is corrupted, (as our Author here saith) & shall forfeit as in case of Felonie.

(h) There is also a Court of the Constable and Marshall, who haue Conusance of Contracts of Deeds of Armes, & of warre out of the Realme, & also of things touching warre within the Realme, which may not be determined or discussed by the Common Law, & also all Appeales of offences done out of the Realme, & they proceed according to the Ciuill Law: but these things more properly pertaine to another kind of Treatise, and therefore I shall speake no more thereof in this place, but onely for the satisfaction of the studious Reader, to quote some Authorities of Law touching the iurisdiction of that Court, that he may haue some taste thereof.

(h) Bract.lib.4. fol.148. 48.E.3.3.13. R. 2. c.2. Rot.Parl. 21.R.2. nu.19. 1.H.4.c.14. 13.H.4.4. & 5. 37.H.6.21. Rot. Parl. 8.R.2.nu.31. Forresc.cap. 32. Rot.Parl. 2.H.4.74. 11.H.4.24. 30.H.6.6. Stanf. Pl.Cor.65. Stat. de Assignat. 4. E.1. Br. Cor. 196. Rot. Parl. 2.H.6. nu. 9. Rot.Parl. 5.H.4. nu.39. Rot.Vasc. 9.H.4. num.14. 8.H. 6.num.38. 21.E.4 17.b. Catesby. 10.H.7. per Vauasor. 18.E.2. Quer.imp. 175. 6.E.3.41. Pasc. 14.E.2. in Scac. le Count de Kents case.p. 39.E.3.cor.Reg. Rot. 49. le Count de Lanc. case. Rot. Parl. 28.E.2.nu.8. Mortimers case. Rot. Parl. 38.E. nu.13. Le Countee de Arundels case.

* Stanf.lib.3. Pl.Cor. 195.b. 27.E.3.77. 13.H. 4.8. Vide Littl.lib. 1. in the Chap.of Dower.

¶ *Le sanke est corrupt enter eux, &c.* * Aptly is a man said to be attainted, attinctus, for that by his attainder of Treason or Felonie his bloud is so stained and corrupted, as first, His children cannot be Heires to him, nor to any other Ancestor, & therefore the warrantie cannot binde, for thereby Heires only are to be bound.

Secondly, If he were noble or gentle before, he & all his children & posteritie are by this Attainder made base and ignoble, in respect of any Nobilitie or Gentrie which they had by their birth.

Thirdly, This corruption of bloud is so high, that regularly it cannot be absolutely salued but by authoritie of Parliament: All which is implyed in the same (&c.)

Sect. 746, 747.

¶ *LE issue en Taile poit enter.* And the reason is, for that by the attainder of the Father, it is now in iudgment of Law but a Release without warrãtie, for albeit the warrantie at the time of the Release was effectuall, yet it worketh no discontinuance vnlesse it descendeth vpon the Issue in Taile, so as if it be defeated, extinct, or determined in the life of the Tenant in taile, then no discontinuance is wrought: and so it is if Tenant in Taile hath Issue, and releaseth to the Disseisor with warrantie, and after is attainted of felonie, and after obtaineth his pardon and dieth, the Issue in Taile may enter; * for the Pardon doth not restore the Bloud, as to the warrantie nor maketh the Issue in that Case inheritable to the Warrantie. But if the Issue in taile in that Case had been attainted of Felonie in the life of his Father, and obtained his Charter of Pardon, and then his father had died, the Issue cãnot enter into the

¶ Item si Tenãt en Taile soit disseisie, & puis fait release al Disseisor oue Garrantie en fee, & puis le Tenant en Tayle est attaint, ou vtlage de Felony, & ad issue & morust, en ceste case lissue en taile poit enter sur le disseisor. Et la cause est, pur ceo que rien fait Discontinuance en ceste case forsque le Garrantie & Garrantie ne poit discender al Issue in taile, pur ceo que le sanke est corrupt perenter celuy que fist le Garrantie & Issue en Taile.

Also if Tenant in Taile bee disseised, and after make a Release to the Disseisor with warrantie in Fee, and after the Tenant in Taile is attaint or outlawed of felony, and hath issue and dieth; In this case the Issue in Tayle may enter vpon the Disseisor: and the cause is, for this; that nothing maketh Discontinuance in this case but the warrantie, and Warrantie may not descend to the Issue in Taile, for this, that the bloud is corrupt between him that made the Warrantie, and the Issue in Taile.

* 27.E.3.77. 1.E. 3.4. 6.E.3.55. 9.H.5.9.31.E.1. Discont.17. 46.E.3.Petit. 20.26. Ass.2.49.Ass.4. 29.Ass.11. 13.H. 4.8. 13.H.7. 17. Pl. Com. in Walsinghams case.3.E.2. Discent.Br.,64. Stanf.Pl. Cor.195, 196. See in the Chap. of Tenant by the Curtesie, touching this matter.

¶ ind Sup. Sect 600. 601.

Sect. 747.

¶ CAr le Garranty touts foits demurt a l' Common Ley, & la Common Ley eſt, Que quant home eſt attaint ou vtlage de Felonie, quel vtlagarie eſt vn attainder en Ley, q̃ le ſanke perenter luy & ſon ſits, & touts auters queux ſerra dits ſes heires eſt corrupt, iſſint que riens per diſcent poit diſcender a aſcun q̃ poit eſtre dit ſon hr̃e per le Common Ley. Et la Feme de tiel home que iſſint eſt attaint de felonie, ne ſerra iammes endow de les Tenements ſa baron iſſint attaint. Et la cauſe eſt pur ceo que homes pluis eſchuerent de fair̃ aſcuns felonies. Mes liſſue en Tayle quant a les Tenements tailes neſt pas en tiel cas barre, pur ceo que eſt enherit̃ per force de le Statute, & nemy per le courſe de Common Ley, & pur ceo tiel attainder de ſon pier ou de ſon anceſtor en le Tayle, ne luy ouſter̃ de ſon droit per force de le taile, &c.

FOr the Warrantie alwayes abideth at the Common Law, and the Common law is ſuch, That when a man is attaint or outlaw'd of felony, which Outlawrie is an Attainder in Law, that the bloud betweene him and his ſonne, and all others which ſhall bee ſaid his heires, is corrupt, ſo that nothing by diſcent may deſcend to any that may bee ſaid his heire by the Common Law: And the wife of ſuch a man that is ſo attaint ſhal neuerbe endowed of the Tenements of her huſband ſo attainted. And the cauſe is, for that men ſhould more eſchew to commit Felonies. But the Iſſue in Taile as to the Tenements tailed is not in ſuch Caſe barred, becauſe hee is inheritable by force of the Statute, and not by the courſe of the Common Law: And therefore ſuch attainder of his father or of his Auncеſtour in the Taile, ſhall not put him out of his Right by force of the Taile, &c.

Land in reſpect of the corruption of bloud vpon the Attainder of himſelfe. (h) And it is a generall rule, That hauing reſpect to all thoſe whoſe bloud was corrupted at the time of the attainder, the Pardon doth not remoue the corruption of bloud neither vpward nor downward. As if there bee Grandfather, father, & ſonne, & the Grandfather and father haue diuers other ſonnes, if the father bee attainted of Felonie and pardoned, yet doth the bloud remaine corrupted not onely aboue him and about him, but alſo to all his children borne at the time of his attainder. But in the caſe of Littleton, if Tenant in taile at the time of his attainder had no Iſſue, and after the obtaining of his pardon had iſſue, that Iſſue ſhould haue bẽene bound by the warrantie, for by the pardon he was as a new creature, Tanquam filius terræ, whoſe bloud vpwards remaine corrupted, but for the Iſſue had after the Pardon, he is inheritable to his Father, and if his father had Iſſue before the Pardon, & had iſſue alſo after and dieth, nothing can deſcend to the youngeſt, for that the eldeſt is liuing and diſabled. But if the eldeſt ſonne had died in the life of the father without iſſue, then the youngeſt ſhould inherit.

(h) Bract lib. 3. fol. 132. 133. 276. & lib. 5. 374. Brit. fol. 215. b. Flet. lib. 1. cap. 28.

¶ *Le Garrantie demurt al Common Ley.* The Collaterall Warrantie is not reſtrained by the Statute of Donis Conditionalibus, but a lineall warrantie is reſtrained by the Statute, vnleſſe there bee Aſſets, as formerly at large hath bẽene ſaid.

Vide Sect. 711. 712.

¶ *Et la feme de tiel home que iſſint eſt attaint, &c. ne ſerra iammes endow, &c.* It is to be obſerued, That the iudgement againſt a man for felonie, is, that he be hanged by the neck vntill he be dead, but implicatiuè, (as hath bẽene ſaid) he is

punished first in his wife, That she shall lose her Dower. Secondly, in his children, That they shall become base and ignoble, as hath beene said. Thirdly, That he shall lose his posteritie, for his bloud is stained and corrupted, that they cannot inherit vnto him or any other Ancestor. Fourthly, That he shall forfeit all his lands & tenements which he hath in Fee, and which he hath in Taile, for terme of his life. And fifthly, All his Goods and Chattels. And thus severe it was at the Common Law, & the reason hereof was, That men should feare to commit Felonie, vt pœna ad paucos, metus ad omnes perueniat. And it is truly said, Etsi meliores sunt quos ducit amor, tamen plures sunt quos corrigit timor. And so it is à fortiori in case of High Treason. But some Acts of Parliament haue altered the Common Law in some of these points: First, By the Statute of Donis conditionalibus, Lands intailed were not forfeited neither for Felonie, nor for Treason, but for the life of Tenant in Taile: This Act was made by King Edward the first, who (as our Bookes (i) speake) was the most sage King that euer was: (k) & the cause wherefore this Statute was made, was to preserue the Inheritance in the bloud of them to whom the gift was made, notwithstanding any attainder of Felony or Treason. And this Act in historie is called Gentilitium municipale. For that by this Act the families of many Noblemen and Gentlemen were continued and preserued to their posteritie. And this Law continued in force from the thirteenth yeare of King Edward the first, vntill the (l) twentie sixth yeare of King Henrie the eight, when by Act of Parliament Estates in Taile are forfeited by attainder of high Treason. But as to Felonies (whereof our Author here speaketh) the Statute of Donis Conditionalibus doth yet remaine in force, so as for attainder of Felonie Lands or Tenements entailed are not forfeited, but only (as hath beene said) during the life of Tenant in taile, but the Inheritance is preserued for the Issues.

(i) 5.E.3.14. 9.E.3.22.
(k) 7.H.4.32. 19.H.6.71. See Littl.lib.1.cap.Dow. Sect.55.

(l) 26.H.8. cap. 13. 33.H.8.cap. 20. 5.E.6. cap. 11.

(m) Stanf.Pl.Cor.195.

(m) The wife of a man attainted of high Treason or petit Treason, shall not be receiued to demand Dower, vnlesse it be in certaine cases specially prouided for. But the wife of a person attainted of Misprision of Treason, Murther, or Felonie, is dowable since our Author wrote, (n) by the Statute in that case made and prouided, which is more fauourable to the woman than the Common Law was.

(n) 1.E.6.ca.13. 5.E.6. cap.11. 5.El.cap.1.& 11. 18.El.cap.1. 12.H.4.3. Vide Sect.55.

(o) If a Seigniorie be granted with warrantie and the Tenancie escheat, the Seigniorie whereunto the warrantie was annexed is extinct, and consequently the warrantie defeated, and it shall not extend to the Land, & sic in similibus.

(o) 6.H.4.1. 45.E.3. Vouch. 72.Pl.Com.292. 16.E.3.Age 46. 18.H.3. Vouch.181. 23.E.3. Garr. 77.

If a Collaterall Ancestor release with warrantie, and enter into Religion, now the warrantie doth binde, but if after he be deraigned, now it is defeated.

See in the Chapter of Villenage, Sect.200.

Sect. 748.

LIttleton hauing spoken in what Cases Warranties may bee defeated and extinguished by matter in Law, now he sheweth how a warrantie may bee discharged or defeated by matter in Deed: and hereupon he putteth an example of a Release in three seuerall maners:

First, By a Release of all warranties.

Secondly, By a release of all Couenants reall.

And thirdly, By a Release of all demands.

(q) If a man make a gift in Taile with warrantie, this warrantie is also intailed, and therefore a Release made by Tenant in Taile of the warrantie, shall not bar the issue, no more than his release shall bar the issue to bring an attaint vpõ a false verdict, or a writ of error vpõ an erroneous

Vide lib.8.fol. 153, 154. Althams Case. 46.E.3.2. 45. E.23. Vide before in the Chapter of Releases. Sect. 508.

(q) 14.Ass. Pl.2. 3.Eliz. Dyer.188. 9.E.4.52.b.

ITem, si Tenant en le Taile enfeoffa son Vncle, l' quel enfeoffa vn auter en fee oue garr' &c. si aps l' feoffee p̃ fait release a s̃ Vncle touts manners des garranties, ou touts manners de Couenants real ou touts manners de dões, p̃ tiel Release le Garrantie est extinct. Et si le Garrantie en cel case soit pleade enuers le Heire en taile, que porta son Briefe de

ALso if Tenant in Taile infeoffe his Vncle, which infeoffes another in Fee with warr', if after the Feoffee by his Deed release to his Vncle all manner of Warranties, or all manner of Couenants realls, or all manner of Demands, by such Release the Warrantie is extinct. And if the Warrantie in this case bee pleaded against the Heire in Taile that bringeth his Writ of *Forme-*

de Formedon p̄ barrer le heire de son action, si l'heire auoit le dit releas & ceo pledast, il defetera le plee barre, &c. Et mults auters cases & matters y sont, per q̄ux home poit defeater garrantie, &c.

don, to barre the heire of his action, if the heire have and plead the said release, &c. he shall defeat the plee in barre, &c. and many other cases and matters there be, whereby a man may defeat a Warrantie, &c.

iudgement giuen against the father, nor his gift can barre the issue of the dee d that create the estate taile, nor of any other Deed necessary for defence of the title.

¶ *Apres le feoffee release.* Littleton here putteth his case where one is bound to warrant: put the case (r) then that two make a feoffment in fee, & warrant the Land to the feoffee and his heires, and the feoffee releaseth to one of the feoffors the warrantie, yet he shall vouche the other for the moitie. And so it is if one infeffe two with Warrantie, and the one releaseth the Warrantie, yet the other shall vouch for his moytie. (r) 45. E. 3. 23.

¶ *Si le heire auoit le dit release, &c.* Here it appeareth that the release being made to the vncle being his Ancestor, the Deed doth after the decease of the vncle belong to him, and therefore he cannot plead it, vnlesse he sheweth it forth.

¶ *Et mults auters cases & matters y sont per queux home poet defeater Garrantie, &c.* As namely by a Defeasance as other things executorie may. Also a Warrantie may lose his force by taking benefit of the same. In a Præcipe the Tenant voucheth, and at the Sequatur sub suo periculo, the Tenant and the Vouchee make default, whereupon the Demandant hath iudgment against the Tenant. And afterwards the Demandant brings a Scire facias against the Tenant to haue Execution, in this case the Tenant may haue a Warrantia Cartæ. And if in that case a stranger had brought a Præcipe against the Tenant, hee might haue vouched again, for by the iudgement giuen against the Tenant the Warranty lost not his force, but if the Tenant had iudgement to recouer in value against the Vouchee, hee should neuer vouche againe by reason of that Warrantie, because hee had taken aduantage of the Warrantie. And it is to be obserued that vpon the proces of Sommoneas ad warrantizandum, if the Sheriffe returne the Vouchee summoned, and he make default, the Tenant shall haue a Capias ad valentiam, but if he returne that the Vouchee had nothing, then after the Sicut alias & pluries a Sequatur sub suo periculo shall issue, and there if the Vouchee make default, the Tenant shall not haue Iudgement to recouer in value, for he was neuer summoned, and it appeareth of Record that he hath nothing, but in the Capias ad valentiam it appeareth that he had Assets, and he had been summoned before: But in some speciall cases there shall be two recoueries in value vpon one Warrantie. As if a Disseisor giue Lands to the husband and wife, and to the heires of the husband, the husband alieneth in fee with Warrantie and dieth, the wife bringeth a Cui in vita, the Tenant vouche and recouereth in value, if after the death of the wife, the Disseisee bring a Præcipe against the Alienee, he shall vouch and recouer in value againe. 43. E. 3. 17. Pl. Com. in Brownings case.

(s) So it is where the wife bringeth a Writ of Dower against the Alienee, he shall recouer in value, and after her death he shall recouer in value againe, vpon the same Warrantie. (s) 45. E. 3. Voucher. 72.

In the same manner it is if a man be seised of a Rent by a defeasible title, and releaseth to the Tenant of the Land all his right in the Land, and warranteth the Land to him and his heires, if he be impleaded for the Rent, he shall vouch and recouer in value for the Rent, and if after he be impleaded for the Land, he shall vouch and recouer in value againe for the Land: but in these and the like cases, the reason is in respect of the seuerall estates recouered, but for one & the same estate he shall neuer recouer but once in value, and though the Land recouered in value be euicted, yet shall he neuer take benefit of that Warrantie after. And as warranties may be defeated in the whole, so they may be defeated as to part of the benefit that may be taken of the same. (t) As he that hath a Warrantie may make a Defeasance not to take any benefit by way of Voucher: In the like manner that he shall take no aduantage by way of Warrantia Cartæ, or by way of Rebutter. (t) 7. H. 6. 43. 13. Ass. 8. 13. E. 3. Garr. 24. 25. 37. 22. H. 6. 51. 8. H. 7. 6.

Sect. 749.

HEre Littleton sheweth, that in the same manner that a collaterall warrantie may be defeated by matter in Deed, or by matter in Law, so may to all intents and purposes a lineall warrantie, whereof hee putteth an example of a lineall warrantie and assets.

¶ *Et vn lineal Garrantie, &c. ouesque ceo que Assets a luy discendist, &c.* Here it appeareth by Littleton, that a lineall Warrantie and assets is a good plea in a Formedon in the discender, wherein it is to be knowen that if tenant in taile alieneth with warrantie, and leaue Assets to descend, if the issue in taile doth alien the assets, and die, the Issue of that Issue shall recouer the land, because the lineall warrantie descendeth only to him without Assets, for neither the pleading of the warrantie without the Assets, nor the assets without the warrantie is any barre in the Formedon in the Discender. But if the Issue to whom the warrantie and Assets descended had brought a Formedon, and by Judgement had beene barred by reason of the Warrantie & Assets: In that case albeit he alieneth the Assets, yet the estate taile is barred for euer: for a barre in a Formedon in the Discender, which is a Writ of the highest Nature that an Issue in taile can haue, is a good barre in any other Formedon in the Discender, brought afterwards vpon the same gift.

Temps E. 1. Garr. 89. 34. E. 1. ibid. 88. 11. E. 2. ibid. 83. 4. E. 3. 24. 5. E. 3. 14. 40. E. 3. 9. 14. H. 4. 39. 24. H. 8. taile Br. 33. 4. Mar. Dier. 139. Lib. 10. fol. 37, 38. in Mary Portingtons case.

¶ CEt est ascauoir, que en mesme le manner come garrantie collateral poit estre defeat per matter en fait, ou en ley, en mesme le manner poit lineal garrantie estre defeat, &c. Car si lheire en taile porta briefe de Formedon, & vn lineal garranty, de son ancester enheritable per force de le Taile, soit plede enuers luy, oue ceo que assetz a luy discendist de fee simple, q̃ il ad per mesme launcester que fist le garrantie, si lheire q̃ est demandant poit adnuller, & defeater le garrantie, ceo suffist a luy. Car le Discent des auters tenements de Fee simple ne fait riens p̃ barrer lheire sans le garrantie, &c.

AND it is to be vnderstood, that in the same manner as the Collaterall Warrantie may bee defeated, by matter in Deed, or in Law; In the same manner may a lineall Warrantie be defeated, &c. For if the Heire in taile bringeth a Writ of *Formedon*, and a lineall Warrantie of his Ancestor inheritable by force of the Taile, be pleaded against him, with this that Assets descended to him of Fee simple, which hee hath by the same Ancestor that made the Warrantie, if the Heire that is demandant may adnull & defeat the Warrantie, that sufficeth him: For the Discent of other Tenements of Fee simple maketh nothing to barre the Heire without the Warrantie, &c.

¶ A *Toy mon fitz, &c.* Here our Author calleth (as many times in these Bookes he hath done) not only his sonne Richard, but euery student of the Law to be accounted his son, and worthily, for that seeing our author had the honour to be in his time the father of the Law, and all good students in the Law iustly account themselues the sonnes of the Law, (for otherwise they are not worthy of the profession) our author, as a carefull and prouident father, as it hath manifestly appeared, gaue excellent instructions in these his bookes, both to his owne sonne, and to his adopted sonnes, to make them from age to age the more apt and able to vnderstand the arguments and reasons of the Law.

¶ CAr ieo ay fait a toy mon fits trois liures.

NOw I haue made to thee my sonne three bookes.

¶ Le

¶ Le primer Liure est de Estates que homes ount en terres ou tenements: cestaſcavoir,

The first Book is of Estates which men haue in Lands and tenements. That is to say,

De Tenant en Fee simple Cap. 1
De Tenant in Fee taile 2
De Tenant in Fee taile apres possibilitie dissue extinct 3
De tenant per le Curtesie Dengleterre 4
De Tenant en Dower 5
De Tenant a terme de vie 6
De Tenant pur terme des ans 7
De Tenant a volunt per le Common Ley 8
De Tenant a volunt per custome del manor 9
De Tenant per le Verge. 10

Le second Liure,

De Homage Cap. 1
De Fealtie 2
De Escuage 3
De seruice de Chiualer 4
De Socage 5
De Frankalmoigne 6
De Homage auncestrel 7
De Grand Serieantie 8
De Petit Serieantie 9
De Tenure en Burgage 10
De Tenure en Villenage 11
De Rents. 12

¶ Et ceux deux petits liures ieo ay fait a toy pur le melior entender de certaine Chapters de le antient Liure de Tenures.

And these two little Books I haue made to thee for the better understanding of certaine Chapters of the antient Booke of Tenures.

¶ *Melior entender, &c.* And these Institutes haue I collected and published to the end that these three Bookes of our Author may be the better vnderstood of the studious Reader.

¶ *Antient Liure des Tenures.* This Booke may well be accounted antient, for it was composed in the raigne of King Edward the third, (as Iustice Fitzherbert saith) by a graue and discreet man.

Fitz. in his Præface to his N. B.

Le tierce Liure.

De Parceners solonque le course del Common Ley Cap. 1

Epilogus.

De parceners solonque le Custome Cap. 2
De Jointenants 3
De Tenants en Common 4
De Estates de terres a tenements & Condition 5
De Discent que tollent entries 6
De Continual Claime 7
De releases 8
De Confirmations 9
De Attornements 10
De Discontinuances 11
De Remitters 12
De Garranties. 13

Epilogus.

¶ *Ieo ne voile enprender ne presumer, &c.* Here obserue the great modestie and mildnesse of our Author, which is worthy of imitation; for Nulla virtus, nulla scientia locum suum & dignitatem conservare potest sine modestia. And herein our Author followed the example of Moses, who was a Judge, and the first Writer of Law; for he was Mitissimus omnium hominum qui fuit in terris, as the holy Historie testifieth of him.

¶ *Les arguments & les reasons del Ley, &c.* Ratio est anima Legis; for then are we said to know the Law, when we apprehend the reason of the Law, when we bring the reason of the Law so to our owne reason, that wee perfectly vnderstand it as our owne, and then and neuer before, we haue such an excellent and inseparable propertie and ownership therin, as wee can neither lose it, nor any man take it from vs, and will direct vs (the learning of the Law is so chained together) in many other Cases. But if by your studie and industrie you make not the reason of the Law your owne, it is not possible for you

¶ Et saches mon fits, Que ieo ne voil que tu croies, que tout ceo q̄ ieo ay dit en les dits liures soit Ley, car ieo ne ceo voile enprender ne presumer & moy. Mes de tiels choses que ne sont pas Ley enquires, & apprendres de mes sages Masters apprises en la Ley. Nient meins coment que certaines choses, queux sont motes & speciftes en les dits Liures, ne sont pas Ley, vncore tiels choses ferra toy plus apt & able de entender & apprender les arguments, & les reasons del ley, &c. Car p les arguments & les reasons en la Ley home pluis toſt auiendra a le cer-

And know my son, that I would not haue thee beleeve, that all which I haue said in these Bookes is Law, for I will not presume to take this vpon me: But of those things that are not Law, inquire & learne of my wise Masters learned in the Law; notwithstanding albeit that certaine things which are moued and specified in the sayd Bookes, are not altogether Law, yet such things shal make thee more apt, and able to vnderstand & apprehend the Arguments and the reasons of the Law, &c. For by the Arguments and Reasons in the Law, a man more sooner shall come to the certain-

certaintie & a la co: naſans de la ley.

tie and knowledge of the Law.

Lex plus laudatur quando ratione probatur.

long to retaine it in your memorie. And wel doth our author coupié argumenta and reaſons together, Quia argumenta ignota & obſcura ad lucem rationis proferunt & reddunt ſplendida: and therefore argumentari & ratiocinari are many times taken for one. And that our author may not ſpeake any thing without authority (which in theſe Inſtitutes we haue as we take it manifeſted) his opinion herein alſo agreeth with that of the learned and reuerend Chiefe Iuſtice of the Court of Common pleas, Sir Richard Hankford, (y) Home ne ſcauera de quel metal vn campane eſt, ſi ne loit bien bate, ne le ley bien conus ſans diſputation. And another ſaith, (*) Ie n'aye diſpute ceſt matter pur la apprender la ley. So as our author hath made a moſt excellent Epilogue or Concluſion with a graue aduice and counſell, together with the reaſon thereof, which all ſtudents are to know and follow, and with Scire and ſequi I will conclude our authors Epilogue.

(y) 11. H. 4. 37
(*) 41 E. 3. 21. Kirton. Vid. Sect. 377.

Lex plus laudatur quando ratione probatur.

Vid. Sect. 384. 443. 550.

This is the fourth time that our author hath cited verſes.

When I had finiſhed this worke of the firſt part of the Inſtitutes, and looked backe and conſidered the multitude of the concluſions in Law, the manifold diuerſities between caſes & points of learning, the varietie almoſt infinite of authorities, antient, Conſtant & Moderne, and withall their amiable & admirable conſent in ſo many ſucceſſions of ages, the manychanges & alterations of the Common Law, & additions to the ſame, euen ſince our author wrote, by many acts of Parliament, and that the like worke of Inſtitutes had not been attempted by any of our profeſſion whom I might imitate, I thought it ſafe for me to follow the graue and prudent example of our worthy author, not to take vpon me, or preſume that the reader ſhould thinke, that all that I haue ſaid herein to be Law: yet this I may ſafely affirme, that there is nothing herein, but may either open ſome windowes of the Law, to let in more light to the Student by diligent ſearch to ſee the ſecrets of the Law, or to moue him to doubt, & withall to inable him to inquire, and learne of the Sages, what the Law together with the true reaſon thereof in theſe caſes is: Or laſtly vpon conſideration had of our ould Bookes, Lawes, and Records, (which are full of venerable Dignitie and antiquitie) to finde out where any alteration hath beene, vpon what ground the Law hath beene ſince changed, knowing for certaine, that the Law is vnknowne to him that knoweth not the reaſon thereof, and that the knowne certaintie of the Law is the ſafetie of all. I had once intended for the eaſe of our Student to haue made a Table to theſe inſtitutes, but when I conſidered that Tables and abridgements are moſt profitable to them that make them, I haue left that worke to euerie ſtudious Reader. And for a farewell to our Iuriſprudent I wiſh vnto him the gladſome light of Iuriſprudence, the louelineſſe of Temperance, the ſtabilitie of Fortitude, and the ſoliditie of Iuſtice.

FINIS.

TO THE READER.

COurteous Reader, *although I haue euer obſerued true, what our Honourable and Graue Author intimates in the concluſion of this Worke*, That Tables and Abridgements are moſt profitable to the makers, *which indeed firſt gaue life to my endeuours in this taske, yet the confidence that they are not altogether vnſeruiceable to others, together with the vndeniable importunitie of ſome eſpeciall friends, hath now wreſted that to the publike view, which only was intended for priuate vſe. I hope the largeneſſe of the Volume will apologize for the length of the Table, and its language ſpeake ſomewhat in excuſe of its prolixitie. And becauſe of the ſmalneſſe of the print, together with the much matter couched in euery line, I haue obſerued ſome notes or figures for your more ſpeedie direction, to what you are inquiſitive. Diuide each page with your eye into three parts, and where you meet with this note (†) it directeth to the vpper part, this note (*) to the middle part, and this (¶) inuiteth you to the lower part of the page, ſo that you may eaſily at the firſt view finde what you deſire, without the tedious reading ouer the whole page: And if you chance to miſſe what you ſeeke for in the Comment, the Text will ſupply it vnto you, or elſe the Printer ſhall be much to blame. Thus requeſting you to weigh theſe my labours in the euen balance of your indifferent iudgement, I ſubmit them to your cenſure, and take my leaue.* From the In. Temp.

A TABLE TO THE FIRST PART OF THE INSTITUTES OF THE LAWES OF *ENGLAND* Alphabetically composed.

¶ Abatement.

1 The Etymology of the word, 134.b.†
2 The divers acceptions of the word, and what it properly signifies, 134.b.†. 277.a.*
3 The difference betweene an abatement, disseisin, intrusion, deforcement, usurpation, and purpresture. 277.a.¶.b.†

¶ Abatement of Writs. Vide tit. Writ. 7:8:9:10:11:12:13:

¶ Abbot Vide tit. Corporation.

¶ Abeiance.

1 The signification & derivation of the word, 342.a.¶.b.†
2 Where the free hold and inheritance of lands, &c. shal be in abeiance, 342.b.* ¶
3 Where an estate of lands, &c. in abeiance may be aliened, or charged, & where not. 343.a.* ¶
4 Where by the grant of tenant in taile of all his estate, or right to a disseisor, the right of the taile shal be in abeiance. 345.a.b.†
5 Where an entry or claime by one that hath no right shal gaine an inheritance by wrong which is in abeiance, 263.b.†
6 The fee simple of the glebe in abeiance. 341.a.†*. vide tit. Parson.

¶ Abettors.

1 Where the Def. in an appeale shal recouer damages against the Plaintif & where not. 138.b. 139.b.* vide Stat. W.2.cap. 12.

¶ Abilitie. Vide tit. Capacitie.

¶ Abjuration and Exile.

1 How a person abiured or exiled is esteemed in Law. 133.a.*
2 Where the wife of such person may sue and be sued without naming her husband. 132.b.¶.133.a vide tit. Coverture. 4
3 What banishment shal be said in Law a ciuill death, & what not. 133.a.*

¶ Abridgement.

1 Where by the performance or breach of a condition, the estate of the feoffee, &c. shal be abridged or enlarged, and where not. vide tit. Condition.
2 Where the lord may abridge the ancient seruices of his tenant by a confirmation, but cannot reserue new. vide tit. Confirmation.

¶ Acceptance.

1 Where the acceptance of a rent shal dispense with a condition broken for not payment, & where not, 211.b¶. 215.a.† vide tit. Condition.
2 Where the acceptance of another thing in satisfaction shal be a good barre in debt, upon an obligat: & where not. 212.b.*¶.213.a.†
3 Where the acceptance of a lesser summe in satisfaction shal be a good barre, and where not, 212.b.¶
4 Where the acceptance of homage or fealtie shall bar the lord of his escheate 268.a.¶
5 Where the acceptance of rent shall barre the lord of his escheat, & where not 268. a.¶.b.† 266.
6 Where the acceptance of seruices by the hands of the feoffee of the tenant, shall exclude the lord of his arerages incurred before, and where not, vide tit. Avowrie.
7 Where the acceptance of the seruices by the hands of the tenant after forclunger of the meine, shal conclude the lord paramont of the arerages incurred before, & where not. 269.b.¶
8 Where the acceptance of another thing, or estate, shal barre the wife of her dower, & where not, vide tit. Dower.
9 Where a man shal be remitted against his owne acceptance, vide tit. Remitter.
10 Where the acceptance of rent the last day shal be a bar to demand arerages incurred before, vide tit. Arerages.
11 Where the acceptance of a new estate by lesse for years &c. shal be a surrender of the first, & where not, vide tit. Surrender.
12 Where the acceptance of a surrender by the lessor shall conclude him to bring an action of waste, vide tit. Wast.

¶ Accessary.

In what offences accessaries may be, and in what not, 57.a.¶

¶ Acre.

Its quantitie & content. 5.b.¶

¶ Action.

1 The definition of an action. 285.a.†
2 The diuision of actions, 284.b.¶ 285.a.†
3 The difference betweene an action & a writ. 289.a.†
4 The difference betweene an action & an execution. 289.a.*
5 A feint action } what. 361.a.¶
A false Action }
6 In what places & Counties actions shal be brought 282.a.¶.b. per tot. pag.
7 Where & what actions shal be brought in confinio Comitatus, & where & what not, vide tit. Assise.
8 Where in actions for things transitory the place or Counties is trauersable, & where not, 282.a.¶.b.†.*
9 In actions transitory the day & time not trauersable, if the act be done before the writ brought, 283.a.¶
10 Where by a release of all actions, causes of actions be released, but within a submission of all actions to arbitrement causes of actions are not contained 285.a.†

¶ Accompt.

1 The seuerall kindes of writs of accompt, & against what persons such writ lyeth, & against what not, 172.a.* ¶
2 Where in an accompt against one as Receiuer hee shal haue allowance of expences and charges, & where not, 172.a.¶
3 Where an Accomptant shal haue allowance of goods stollen or miscaried, & where not, 89.a.¶
4 Where an Accompt lyeth by & against an Executor or Administrator, and where not 89.b.*90.b.†*
5 Where an Accompt lyeth by one Joyntenant or Tenant in Common against his Companion, & where not, 172.a.¶.186.a.*200.b.*
6 A release of all duties no barre in an Accompt. 291.a.¶
7 Where in an Accompt as Receiuer the defendant may wage his Law, & where not. 295.a.*¶. vide tit. Wager of Law.
8 Where & against whom a Capias lyeth in an Accompt, & where, & against whom not, 89.a. vide Stat. W.2.ca.12

Accompt against Gardian in Socage, vide tit. Socage.

¶ Acquitance.

Where an acquitance for rent due the last day shal be a discharge for all the arerages incurred before, vide tit. Arrerages.

¶ Acquitall.

1 The signification & derivation of the word, 100. a †
2 The severall kinds of acquittals, ibid.
3 To what tenure acquitall is incident, & to what not, 100. a †. 101. a *

¶ Admeasurement

ADmeasurement of Dower where it lyeth by the Gardian in Chivalrie, and where by the heir, 39. a*

¶ Administrator, vide tit. Executor.

¶ Admirall.

1 The Etymologie of the word, 260. b *
2 How called anciently, & how at this day, 260. b*
3 The iurisdiction of the Admirals Court, & from what antiquitie, & according to what Law they proceed, 260. a ¶. b †. 391. a*

¶ Admission.

The description & forme of an admission & institution of a Clerke, 344. a ¶

¶ Advowson.

1 ADvocatio quid, & unde, 17. b ¶. 119. b ¶
2 The antiquitie of the word, 17. b ¶
3 How advocatio medietatis, & medietas advocationis differ, 17. b ¶. 18. a *
4 Where an advowson lies in tenure, 85. a ¶
5 Where in grant, & not in livery, 332. a * 335. b *
6 Where the disseisee or issue in taile after discontinuance, may present to an advowson before recontinuance of the Mannor, to which, &c. and where not, 307. a † 333. b *
7 Where & what act shall put the Patron out of possession of an advowson, & where & what not, 344. b * vide tit. Quare Imp. & Presentation.
8 Where an advowson shal be assets & how valued, vide tit. Assets.
9 Where an advowson at one turne may bee appendant, & at another in grosse, vide tit. Appendants.
10 Where an advowson appendant shal passe by grant of the Mannor without (cum pertinentiis) & where not, vide tit. Grants & Prærogative.
11 Where & how Partition may be made of an advowson, & where it shall bee good without deed, vide tit. Partition.

¶ Æquivocum quid, & quotuplex, 154. b ¶

¶ Affiance, & affidare quid? 34 a ¶

¶ Age.

1 AGe to alien or contract what our Law requires, & what other lawes 78 b †. 172. b ¶. vide tit. Infant.
2 Age to doe Knights service, vide tit. Knights Service.
3 The severall ages of a man to divers purposes, 78. b ¶ 79. a ¶
4 The divers ages of a woman to severall purposes, 78. b *
5 Age to be professed in Religion, vide tit. Profession.
6 Where one Parcener being an infant shal have her age, notwithstanding the full age of her sister, 164. a † vide tit. Paroll demurre.
7 A Lease to one & his heires pur auter vye, the heire of the Lessee shal not have his age, 139. a ¶
8 Where a Bastard shall have his age, 244. b †
9 Where the heire upon a descent by reason of the profession of his Ancestor in religion shall haue his age, 248. b ¶
10 Where tenant for life surrender to him in the reuer: within age, he shall not have his age, 338. b †
11 Where the heire shall have his age in a cessavit, 380. b ¶ 381. a †

¶ Agent and Patient.

1 WHere a woman may indow herselfe de la pluis beale, 39. a ¶. b †
2 Where an executor may pay himselfe by retainer, vide tit. Executor.
3 Where a man may vouch himselfe & recover in value, vide tit. Voucher & Warrantie.
4 Where a man may limit a Remainder to himselfe, vide tit. Remainder.

¶ Agreement and disagreement.

1 WHere an infant or his heires may disagree to his owne purchase, 2. b ¶
2 The heire of an Ideot or mad man to that of his ancestor, ibid.
3 The husband or the wife her selfe after couerture to the purchase of the wife, 3. a †. vide tit. Covertue.
4 Where an agreement to the entry or act of a stranger shal be as available, or preiudiciall to the partie as his owne act or entry, & where not, 180. b * ¶. 207. a † 245. a *
5 Where the agreement to a conveiance whereby an estate is after cast upon the disseisee or issue in taile shall hinder a Remitter, 359. b †. vide tit. Remitter.
6 Where the not agreeing to an estate cast upon the Tenant shal excuse him of damages in a writ of Entry, vide tit. Damages.
7 Where a feme couert may disagree to an estate determined to saue her selfe from damages. 380 b*
8 Where a warrantie descending shall hinder the disagreement of the Feme to an estate made during Coverture, vide tit. Warrantie.
9 What act shall be said a sufficient agreement or disagreement to an estate to determine an Election, & what not, vide tit. Election & Dower.
10 Where an agreement in the absence of the partie to whom, &c. shall be good, & where not, vide tit. Attornment.
11 Where marriage infra annos nubiles shall bee good by agreement after, & where void by disagreement, vide tit. Mariage. 13.
12 Where the discontinuee of the husband makes a lease to the wife, the disagreement of the husband shall not oust the Feme of her remitter. vide tit. Remitter.

¶ Aide.

1 WHere a Parson, Vicar, &c. shall have aide of his Patron, & Ordinary. 341. b. *.
2 Whereupon an aboway at this day for services aydes grantable of any man, 312. a †. vide Stat. 21. H. 8. cap. 19.
3 Where one Coparcener or her Assignee shall have ayde of the other to recover pro rata, & where not. vide tit. Partition, & Parceners.
4 Where a Bishop, Abbot, &c. shall not have ayde of the King, otherwise of a Meane Collative. 341. b ¶

¶ Ayde pur faire fits Chivaler, &c. vide tit Knights Seruice, & Stat. W. 1. cap. 36.

¶ Alien.

1 THe Etymologie of the word. 128. b ¶
2 The description of an Alien. 129 a †

3 Where an Alien may be capable of lands, &c. to his owne vse, & where onely to the vse of the King, 2. b † *
4 Where & by what meanes he may be made to inherite, & where & by what not, 8. a † 129. a *
5 Where & in what actions Alienee shal be a good plea in disabilitie of the person of the plaintife, & where & in what not, 129. a † ¶. b †
6 Where an alien disseisor is indenized, the release of the disseisee after shal barre the King of the land, secus if he had been the feoffee of a disseisor, vide tit. Release.
7 The sonnes of an Alien borne within the ligeance of the King not inheritable either to other, 8 a †
8 Where an alien may wage his law, 295. a * vide tit. Wager of law.
9 Where a reversion is granted to an Alien, & after denization the Tenant atturne, the King upon office found shal have the land, 310 b ¶
10 Where a Feme alien shall have dower, & where not, vide tit. Dower.
11 Where an alien may be challenged to be a Juror, vide tit. Challenge.
Vide tit. Denizen, & Ligeance.

¶ Alienation.

1 The derivation of the word, 118. b †
2 What shall be said an alienation to divers purposes & what not, 118. b † *
3 Where the restraint of alienation by the condition of a gift, or conveyance shal be good, & where not, vide tit. Condition.
4 When licences of alienation first began, & how, 43. a ¶ b †

¶ Allegeance.

1 HOw such oath first began, & where, & when to be taken, 68. b †. 172. b †
2 How it differeth from the oath of fealtie, 68. b †

¶ Allodarii seu Allodium quid? 1. b †. 5. a *

¶ Alnetum quid? and what passeth by such grant, 4. b *

¶ Amerciament.

1 AMerciament what, & whence so called 126. b ¶
2 How it differeth from a fine, 127. a † ¶ vide tit. Fines.
3 The causes of Amerciaments in actions reall, & personall, 126. b ¶. 127. a †
4 Where an amerciament shall be due for the abatement of a writ, & where not, 127. a †
5 How an amerciament anciently was called, 127. a *
6 Where in debt for an amerciamēt the defendāt shal wage his law, & where not, 295. a * vide tit. Wager of Law.
7 Where issues & amerciaments shall be levied upon the lands which the Jurors or parties nonsuit had at the time of the panell returned, or finding of pledges & where not, 102. b †
8 Where a pardon after the action brought & before judgement shal discharge the partie of an amerciament, vide tit. Pardon.
9 What persons shall be amerced & what not, 127. a †

¶ Annuitie.

1 THe description of an Annuitie, 144. b *
2 Where the heire of the grantor shal not be charged in an annuitie without naming, 144. b ¶
3 Where the heire of the grantee, & his assignee may have a writ of annuitie, 144. b *
4 Where & for what rent a writ of annuitie lieth against the grantor, & where & for what not, 144. b † ¶
5 Where it lieth not for a rent reserved by Indenture upō a feoffment in fee, 144. a † vide tit. Reservation.
6 Where two joyning in a grant of an annuitie the grantee may have two severall writs, & where but one, 144 b *
7 Where it lyeth not against an heire by prescription, 102 a *
8 Annuitie pro consilio, &c. where grantable over, & where not, 144 a †
9 What shal be said a sufficient act to determine the election of the grantee of a rent charge to make it an annuitie or a rent, & what not, 144 b ¶ 145. a ¶ b ¶
10 Where the rent charge being determined the grantee notwithstanding shal have an annuitie, & where not, 148 a * 150. a † 349. a ¶
11 Where the cause of the grant of an annuity shal amount to a condition, & the one ceasing, the other shal determine, 204 a *
12 Annuitie granted in Febr. payable at Mich. & the Annunciation shal be construed to bee at the Annunciation, & Mich. 217. b †. vide tit. Grants.
13 Where in a writ of annuitie the annuitie determineth hanging the writ, the arrerages are become irrecoverable. 285. a ¶
14 A release of Actions reals or personall a good barre in an Annuitie, 285. a ¶
15 Where the annuitie is not arere, a release of all actions is no barre, 292. b. ¶
16 Where an annuitie granted by the Patron & Ordinary in time of vacation shal binde the succeeding Parson, vide tit. Parson.
Vide tit. Rents.

¶ Apparance vide tit. Default.

¶ Appeale.

1 THe description & derivation of an Appeale, 123. b * 287. b † *
2 The severall sorts of appeales, 287. b *
3 What shall be said a good plea in barre of an appeale of murder or felony, & what not, 287. b † ¶ 288. a † * vide tit. Releases.
4 Where the wife shall have an appeale of the death of her husband, & where not. 33. b †
5 Where the wife shall have an appeale & yet shall not be endowed, & è converso. ibid.
6 Where the heire shall have an appeale of the death of his Ancestor, where the party by whom hee conveyeth his descent could not by possibilitie, 25. b †
7 Within what time it ought to be brought. 254. b ¶
8 Where in an appeale the parties ought to maintaine the combate in proper person, other wise in a writ of right, 294 b ¶
9 Where the Defendant in appeale shal recover damages, & where not, vide tit. Abettors.

¶ Appendant, Parcell, & Incident.

1 APpendant what? & why so called? 121. b *
2 The difference betweene Appendants, & Appurtenants, 121. b *
3 What things may be appendant to other, & what not, 49. a *. 121. b ¶ 122. a †
4 Where an advowson at one time may be appendant, & at another in grosse, 122. a *
5 Where a remitter to the principall shall be a remitter to the appendant, notwithstanding seberance by the discontinuee. 349. b *. 363. b *
6 Where a remitter shall not bee to a thing appendant before recontinuance of the principall. 349. b *
7 Where a thing become totally disappendant may bee appendant againe by a grant in as ample manner. 121. b ¶

8 What properly said to be an incident. 251. b.†
9 The severall sorts of incidents, 93 a.†.
10 What services incident to other, 69. a.†. vide tit. Fealty & tit. Homage.
11 Rent & services incident to the reversion, & shall passe by grant of the reversion, but not è converso, 151, b 152 a. 317 a.* 324 a ¶. b.¶
12 Distresse incident to every service, vide tit. Distresse.
13 Incidents to the blood not forfeitable, or transferrable over. 99. a ¶.
14 To what tenure acquitall incident & to what not, vide tit. Acquitall. 3
15 Where by the grant of a messuage the garden, Orchard & Curtelage shal passe as appendant, 5. b.*.
16 What things may bee parcell or appendant to a Manor, & shal passe by grant of the Manor, & what not, vide tit. Manor.
17 Where upon a Lease of a Manor except parcell, the part excepted shall continue parcell of the Manor, & where not, vide ibid.
18 Where a thing appendant, &c. shall passe by a grant (cum pertinentiis) & where without such clause, & where not without speciall mention. vide tit. Grants, & Prærogative.

¶ Apportionment.

1 APportionment what? & whence derived? 147. b. ¶.
2 Where part of the land out of which, &c. comming to hands of a Grantee of a rent charge, the rent shall be apportioned, & where not, 147. b ¶. 149. b* ¶. 150. a.†
3 Where a rent charge may be apportioned by the act of the partie & where not. 148. a †. 149. b. ¶. 150. a.†*
4 Where by the eviction of part of the Land the rent issuing thereout shall bee apportioned, & where not, 148. b.*. ¶
5 Where by purchase or surrender of part of the land, or alienation of part of the reversion a rent service shal be apportioned, 148. a ¶.
6 Where a rent charge shal be apportioned albeit the Grantee claimeth part of the land out of which, &c. under the Grantor and where not, 148. b. ¶.
7 Where a condition may bee apportioned, and where not, 215. a. ¶
8 Where notwithstanding a discent of part of the land to a Commoner the entire common shall remaine, & where it shall be apportioned. 149. a †.
9 By purchase of part of the tenancie by the Lord, what services shall be apportioned, and what not, 149. a ¶ b † vide tit. Extinguishment.
10 Where Damages shall be apportioned, & severed upon a recouery, vide tit. Damages.
11 Where a warrantie shall be apportioned, & determine in part, & stand good for other part, & where not. vide tit. Warrantie.
12 Where a power to reboke uses may bee apportioned, & rebocation made at severall times, vide tit. Revocation.

¶ Appropriation.

WHere the appropriation of a Church to a house of religion shal be mortmaine, 304. a ¶

¶ Armes and Armory.

1 THe course of descent of Armes, & how it differeth from other inheritances, 27. a*. 140. b.†
2 The Armes of England & France when first united. 7. a.*.
3 When the Kings of England began first to seale their Charters with a seale of Armes. 7. a.*

¶ Argument.

1 THe severall sorts of Arguments, & what shal be said a good argument or proofe in Law. 11. a *. ¶. b. †. *.

¶ Array.

1 THe signification & derivation of the word. 156. a.†
2 What shal be said a sufficient challenge to the array, & what not, vide tit. Challenge.

¶ Arraignment.

1 THe signification & derivation of the word, 262. b¶.
2 To arraigne an Assise what? ibidem.
3 The arraignment of a prisoner what? 263. a†

¶ Arrerages.

1 WHere an acquitance for rent due the last day shall be a discharge of all the arrerages incurred before. 373 a ¶
2 Where the acceptance of services by the hands of the feoffee of the tenant shall bar the Lord of his arrerages incurred before & where not. vide tit. Acceptance & Avowry.
3 Where in a writ of annuity the annuity determineth hanging the writ the arrerages are become irrecoverable. vide tit. Annuity.
4 Notice to the Lord to change his avowry not sufficient without tender of the arrerages. vide tit. Avowry.
5 Where the husband surviving shal have the arrerages of rents incurred before the coverture as wel as after vide stat. 32. H. 8. cap. 37.

¶ Assets.

1 WHat shal be said assets in the hands of an executor or administrator, & what not, 113. a* 117. a* 124. a ¶ 236. a ¶
2 What shal be said sufficient assets to make a lineal warranty a barre to an estate taile & what not. 374. b*
3 Where a rent extinct shall be said assets, 374. b*
4 Where an advowson shall bee assets & how valued, ibid.
5 A Seignior of Homage or Fealty, or in Frè almoigne no assets, 374. b*.

¶ Assignment.

1 THe derivation of the word 8. b ¶
2 The severall sorts of assignes. ibidem.
3 Where an executor shal be reputed in law an assignee, & where not, vide tit. Executor.
4 Where an assignee shal take advantage of a condition & where not. 214. b†* 215. a † b ¶ vide Stat. 32. H. 8. cap. 37.
5 Where an assignée shall take advantage of a covenant real without being named in the deed, otherwise of a warranty, 384. b ¶. 385. a † vide tit. Warranty.
6 Where an assignée shall have a writ of annuity, & where not, vide tit. Annuity.
7 Where an action of wast lyeth against the assignée for waste done before the assignment, & where not, vide tit. Wast.
8 Who shal take advantage of a warranty in deed as assignée, & who not, vide tit. Warranty.
9 Where an assignée shal take advantage of a warranty in Law, & where not, vide ibidem.
10 What shall be said a good assignment of Dower, & by whom, & what not, vide tit. Dower.

¶ Assise.

1 THe derivation & proper signification of the word, 153. b. ¶
2 The severall acceptions in Law of the word Assise ibid. 154.* b ¶ 155. a b 159. b†
3 The severall sorts of writs of Assises, & why so called, 155. a†. 159. a ¶ b†
4 Assise of novel disseisin & whence so called, 153. b¶

Where

5 Where an Assise in continio comitatus lay at the Common Law, & where at this day, 154.a.† vide Stat. 2. R 2. cap. 10.
6 What shal be said a good plea in barre of Assise & what not, 228.b. 229 a.† 285 a ¶ b*
7 Where the Conusee of a reversion by fine upon a Lease for yeares being disseised shall have an Assise before Attornment, 320.a * vide tit. Attornment. vide tit. Disseisin.

¶ Attainder.

1 The severall sorts of attainders, 390.b. *
2 The severall writs of Escheat upon attainders. 390. b.¶
3 Where a man may be attainted after his death, 390. b.¶
4 By discent of the crowne upon a person attainted, the attainder eo instante void, 16. a†
5 The difference between a person attainted & convicted, a.* b.¶. 391 a.†
6 What a felon forfeits by conviction before attainder, 391. a†
7 Judgement to peine fort & dure upon refusal to answere according to law, or saying nothing, no attainder, 391. a.*. vide tit. Treason.
8 Where the def. in an appeale waging battel is slaine he shal have iudgement to be hanged, 390. b. ¶
9 Where attainder in the Admirals Court for Pyracy, murder, &c. upon the sea, shal worke no corruption of blood or forfeiture of lands, otherwise of an attainder before commissioners by the statute, 28. H. 8. vide Stat. 28. H. 8. cap. 15.
10 Attainder of Heresie, or in a Præmunire no corruption of blood, 391. a ¶
11 In what manner & degree the blood is said to be corrupted by attainder, 391. b. †
12 Where a person attainted hath issue, & after pardon hath issue, the yongest is not inheritable during the life of the eldest or his issues, 8. a.*. 392. a *
13 Where the sonnes of a person attainted borne before the attainder shal inherit each to other, secus of sonnes borne after the attainder, 8 a * vide tit. Felony.

¶ Attaint.

1 The derivation of the word, 294. b.*.
2 Where such writ lyeth, ibidem.
3 The iudgement in an Attaint. 294 b.*.
4 No supersedeas grantable upon an attaint, 227. b †.
5 No Conusans grantable in an attaint, vide tit. Conusans.
6 A release of all actions a good bar in an attaint, 289. a.† vide tit. Releases.
7 No attaint lyeth upon a verdict in wast, Quale jus or other enquest of office. 355. b.*
8 Where it lieth upon a verdict in an Assise, 355. b. *
9 Where an attaint lieth upon a verdict where the witnesses are joyned to the enquest for triall of the deed & where not. 6. b.*
Vide Stat. 23. H. 8. cap 3. Of Attaints, & between what parties maintainable, & what shal be said a good plea in an attaint, & what not.

¶ Atturnement.

1 The definition of an Atturnement, 309 a. †
2 The division of Atturnments, 309. a *
3 Atturnment why requisite, ibidem.
4 What act or words shall amount to an Atturnment, 310. a.*
5 Where it ought to be in the life of the parties, & where it shall be good to the heire, 309. a.¶ b.† 315. a.¶.
6 In what conveiances requisite upō passing a reuersion, &c. at this day, & in what not. 309. b.†. 314. b.*. 321. b.*. ¶. 33
7 Where a grant to, or by the King shal be good without atturnment & where not, vide tit. Prærogative.
8 Payment by the tenant to the baily of the grantee who formerly received the rents, no atturnment without notice; vide tit. Notice.
9 Where the Mesne grant over his mesnalty, & the lord paramount release to the tenant, atturnment by the tenant after shal be sufficient to passe the rent seeke by surplusage, 309. b ¶.
10 Where after a grant of the reuersion of two acres the lessor levy a fine of one, an atturnment after to the grant shall passe the other acre, 309. b. ¶.
11 Where an Atturnment for part of the grant shal bee good for the whole, 309. b. ¶. 314. a. ¶ b.*
12 Where an atturnment to one Joyntenant shall be good to both, & one dying an atturnment to the survivor good, 310. a †
13 Atturnment to him in the remainder after the death of grantee for life void, 310 a.†
14 Where an attent in the absence of the grantee shal be a sufficient atturnment 310. a*
15 Where two grants are made of the same thing, an atturnment to the second shal bee a frustration of the first, 310. a. ¶
16 Where the enlargement or alteration of the particular estate after grant of the reversion shall bee a countermand of the atturnment. 310. a ¶
17 Where a feme grant a reversion, the taking of a husband shal bee a countermand of the atturnment, 310. b.†
18 To what purposes an atturnment shall have relation to the first grant, & to what not, 310. b * vide tit. Alien.
19 Where a reversion is granted to a man & a feme, by an atturnment to them after marriage they have no moities, 310. a†
20 Where the entermarriage of a feme grantor with the grantee shal be a good atturnment in law, 310. a †
21 Where an atturnment to Cestuy que vse shal vest the reversion in the grantee, 310. a †
22 Where an atturnment to the grantee for life of a reversion shal be good to all in the remainder, 310 a.*
23 Where a reversion is granted for life, & after to the same grantee for yeares, an atturnment to both grants void, 310. b †
24 Where a seignory is granted to a Bishop & his heires, & after to him & his successors, atturnment to both grants void, 310. b.†
25 Where a reversion is granted of B. acre, or white acre, an atturnment to the grant shal vest the estate in the grantee upon his election, 310. b. †
26 Where upon the feoffement of a manor nothing of the services passe vntill atturnment of the free tenants, 313 b.* ¶
27 Where in pleading such a feoffment the atturnmēt of the tenants need not be alleaged, 510. b. ¶. vide tit. Pleading.
28 Where the tenants atturne to a lease for yeares of the manor, the atturnment after of the lessee shal be sufficient to passe the reversion. 311 a†
29 Where to the grant of a seignory, &c. the atturnmēt onely of the immediate tenant in priuity requisite, 311 a * ¶ b.† 312. a † * b.†. 313. b.¶.
30 Where to the grant of a rent-charge or seeke the atturnment only of the tenant of the freehold requisite 311. b. per tot. pag.
31 Where such rent is granted for life, & the tenant atturne, the atturnment after of the grantee shal be sufficient to passe the reversion, 311. b. ¶ vide tit. quid Juris clamat.
32 Where upō grant of such rent issuing out of a reversiō the atturnment only of him in the reversiō requisite, 311. b ¶
33 Where & to what kinde of Inheritances granted atturnment

ment is requisite, & where, & to what not, 312. a.*
34 Where an atturnment to the grantée for life of a seigniory shall be good to him in the remainder to distraine & where not, 312. b †. 320. b ¶
35 Where the acceptance of a grant of the seigniory by the baron seisedof the tenancy in the right of his wife shal be a good atturnment to bind the wife after couerture, 312. b ¶
36 Where a seigniory is granted to the tenant & a stranger, the acceptance of the tenant shal be a sufficient atturnment to extinct his moity & vest the other in the grantée, 313 a †
37 Where the acceptance of a grant of the seigniory to the wife by the husband being tenant shal be a good atturnment, 313 a*
38 Where the acceptance of a grant of the seigniory by a lessée for life of the tenancy shal be a good atturnment to vest the seigniory in himselfe, 313. a ¶. b †
39 Where in a scire facias vpon a fine iudgement to recover part of the seruices shal bee a good atturnment in law for the whole, 314. b.*
40 Atturnment by one Joyntenant good for all. 314. a.* 319 a. ¶
41 Where an infant shal be compelled to atturne, vide tit. Infant.
42 Where a man deafe & dumbe may atturne; secus of a non compos mentis, 315. a ¶
43 Where vpon grant of a reuersion tenant by statute merchant. &c. or executors hauing till the debts be payd shall be compelled to atturne, 315. b. ¶
44 Where tenants in dower, or by the Curtesie after assignment of their estates shall atturne, & where the atturnment of the assignée shall bee sufficient, 316 a †*
45 Where the atturnment of an assignée of the particular estate vpon condition shal be sufficient to passe the reuersion, 316. a.*
46 Where an atturnment by tenant in taile shall be good & where he shal be compelled to atturne & where not, 316. a ¶ b. †
47 Where the atturnment of lessée for yeares or him in the remainder for life expectant shal be sufficient to passe the reuersion in fee. 316. b. ¶. 317 a. †
48 Where the acceptance of lessée for life of a confirmation of his estate, the remouer shal be a good atturnment to vest the remaind: 317. a ¶
49 Where by the release of one Joyntenant to his companion, he shall distraine for the whole, & haue an action of waste against the Lessee without atturnement, 318. a †
50 Where the particular tenant shal be compelled to atturne in a Quid Juris clamat vpon graunt of the rever: & where not, vide tit. Quid Juris clamat.
51 Where the re-entry of the lessée vpon the feoffée of his lessor shal be a good atturnment to settle the reuer: in the feoffee, 318. b *¶
52 Whether the recouery in an Assise by the lessee for life against such feoffee shal be an atturnment, quære, 319. a †
53 Where a rever: is granted for life vpon a lease for life, & the lessée atturne, & the lessor disseise the lessée & make a feoffment, the regresse of the lessee shal be no atturnment of the grantee for life, 319 a ¶
54 Where a seigniory, or reuer: is granted by fine, what advantages the conusee may take before atturnement, & what not. 319. b ¶ 320 a & b. per tot. pag.
55 Where by a generall atturnment without any saving the tenant for life shall lose his privileges, & where not, 320 a *b. vide tit. Quid Juris clamat & Per quæ servitia.
56 Where one that claimeth vnder a conusee by fine may distraine or maintaine any action, albeit no atturnment made to the Conusee or him that hath his estate, & where not, 309. b * 321 a & b. per tot. pag.
57 Where the deuisée of a rever: may distraine or haue any action without atturnment, 322. a. b †
58 Where an atturnment upon condition shall bee good, & where not, 274. b †. vide tit. Condition.

¶ Atturney.

1 The signification of the word 51. b ¶
2 The seuerall kindes of Atturneys ibid.
3 What persons may be Atturneys in the Kings court, & what not, 128. a *
4 The difference betweene an Atturney & a Responsalis in ancient times, 128. a *
5 Where an Ideot or lunatike ought to sue in person, & not by atturney, 135. b ¶
6 Where livery of seisin by an atturney shall bee good, & what warrant shal be sufficient & well pursued, & what not, vide tit. Livery.
7 Where in an action by an Atturney for fees, the def: shal not wage his Law, vide tit. Wager of Law.

¶ Audita Querela.

1 Where for matter of discharge happening since the Judgement, the party shal have an Audita querela before Execution, 290. b * vide tit. Execution.
2 A release of all actions personals a good bar in an Audita querela, 289. a †. vide tit. Release.

¶ Averrement.

1 Averrement what. 362. b *
2 The seuerall kindes of auerrements, 362. b. *. ¶.
3 What pleas ought to be averred, & what not, ibid 303 a ¶
4 Where in a Præcipe the tenant plead non-tenure, or disclaime, the demandant notwithstanding may auerr him tenant, & where not, 362. b †. 363. a ¶
5 Where a feme in pleading may averre a feoffment to be Causa matrimonij prælocuti without shewing a deed, vide tit. Causa matrimonij, &c.
Vide tit. Pleadings.

¶ Aunceſter.

The derivation of the word, & how it differeth from predecessor, 78 b.*

¶ Avowrie.

1 The seuerall formes & kindes of Avowries for rents & services, 268. a ¶. b †
2 Where the lord shall be compelled to avowe upon the feoffée or grantée of his tenant, & where not, 269. b † ¶ 321. a*
3 Notice to the lord to change his avowrie not sufficient without tender of the arrerages, 269. b ¶
4 Where the lord by his avowry vpon the feoffée of his tenant, shal lose the arrerages incurred in the time of the feoffor, & where not, 269. b * vide tit. Acceptance.
5 Where the tenant being disseised shal compell the lord to avow upon him, & where not, 268. a ¶. b ¶
6 Where the avowry of the donor upon his donée in taile shal be good notwithstanding a discontinuance, 77. a † 269. a †
7 Where the donor in taile having but one reversion shall make two seuerall avowries upon his donée, 23. a*
8 Where the lord at this day may avow upon the lands & tenements holden without naming any person in certaine, 269. b † ¶. vide Stat. 21. H. 8. cap. 19. & what alteration of the Common Law is introduced by that Stat.
9 Where upon an avowry at this day aide is grantable of a stranger, vide tit. Aide. 2
10 Where the executors may avow for the arrerages of rent incurred in the life of testator, vide Stat. 32. H. 8. cap. 37.

¶ Au=

¶ Authoritie.

1 Where the performance of the substance shall be a good pursuit of an authoritie, & where it ought to be strictly pursued, 49.b† 52.a*b† 303.b†.
2 Where by the execution of the authoritie of another concerning lands, a man shall prejudice his owne interest, and where not, 52.a ¶.
3 Where a man may doe lesse then his authoritie warrants, and where not, 52.a¶.b† 258.a¶.259.a†
4 Where the death of the party shall be a countermand of his licence & authoritie and where not, 52.b.* ¶
5 Where an authority shal survive, & where not, 181.b†
6 Where an authority is given to three or foure joyntly or severally, the act done by two shall be good, and where not, 181.b*
7 Where a man doing more then his authoritie warrants, it shall be void for all and where good for that which is warranted, and void for the rest, 258.a*
8 Where an authoritie or power may be apportioned, vide tit. Apportionment.

¶ Aumone quid, 97.a†

¶ Ayel.

Where such writ lyeth, 160.a*

¶ Bailement.

Where the Bayliè shall satisfie for the goods stolne, or otherwise miscarried, and where not 89.a¶

¶ Bailife.

1 The signification and deriuation of the word, 61.b* 168.b†* vide Stat. Magna Charta cap. 28.
2 The office and duty of a Bailife, 62.a†. 168.b.† |
3 Where and for what things a Bailife chargeable in an accompt, 172.a* vide tit. Accompt.
4 Where a Gardian in Socage occupying after the heire accomplish the age of 14. shall bee charged in an accompt as Baylife, vide tit. Socage.
5 Where one Joyntenant or Tenant in Common shall haue an accompt against his Companion as Baylife, vide tit. Accompt.

¶ Banke.

1 The signification of the word, 71.a†
2 The antiquitie of the Court of common Banke, ibid
3 The stile of the Courts of Kings bench, and Common pleas, 71.b†

¶ Bargaine and Sale.

1 What estate the Bargainor shall be said to haue in him before inrolment, 147.b*
2 To what purposes a bargaine and sale after inrolment shal relate to the first deliverie, and to what not, 147.b* 186.a*
3 Where the bargainée of a Seigniorie or rever: shall distraine or haue an action of wast before atturnment, 309.b†.321.b¶
4 Where the reservation of a rent upon a bargaine and sale shall be good, vide tit. Reservation.

¶ Barretor.

1 The deriuation of the word, 168.b†
2 The description of a Barretor, 168.a¶
3 Where a warranty upon a feoffement to barretors, whereby the tenant waives the possession shal be said to commence by disseisin, vide tit. Warrantie.

¶ Baron and Feme.

1 To what purposes Baron and feme are said to be one person in law, 112.a¶. 187.b† 351.a.
2 What things of the wife are given to the husband by the marriage, and what not, 351.a per tot. pag. & b†
3 Where the husband shall haue the chattels reals of his wife, and where not, 46.b* 185.b* 299.b¶.300.a† 351.a*¶
4 What act of the husband shall ter a disposition or alteration of the terme of his wife, and what not, 46.b* 351.a*
5 Where upon an execution against the husband the Sherife shall sell the terme of the wife, 351.a*
6 Where the charge of the husband upon the Chattell of the wife shall not binde the wife surviuing, ibid.
7 Where the husband surviuing shall haue the chattels of his wife consisting in action, & where not, 351.a¶.b†
8 Where the husband surviuing shall haue the arrerages of the rents of his wife incurred before couerture as well as after, vide Stat. 32. H. 8. cap. 37.
9 Where a Lease by husband and wife shall bind the wife and her heires, and where not, 44.a¶
10 By what meane the husband in his life may passe an estate in lands to the wife, and by what not, 112.a*
11 Where a sale of lands by the wife to the husband shall be good, and where not, 112.a¶.187.b¶
12 Where a protection cast for the husband shall be good also for the wife, 130.b†.
13 Where husband & wife shall be Joyntenants, & where by entierties, & where by moities, vide tit. Ioyntenants. 30
14 Where the husband & wife shal wage their law for the debt of the wife before couerture, vide tit. Wager of law.
15 Where the husband may be an Atturney to deliuer seisin to his wife, 52.a* 187.b¶
16 Where the grant of acquitall to the husband & his heire shall extend to the wife after his death, 241.a*
17 Where the laches of the husband shall prejudice his wife, & where not, 246.a¶ b†*
18 Where by attainder of the wife the Lord by escheat shal oust the husband before issue, 351.a*
19 What estate the King gaineth by attainder of the husband during couerture, ibidem.
20 Where the wife shall be punished for wast done in the life of her husband, & è converso, vide tit. Wast.
21 Where the wife being remitted during couerture, may after the death of the husband waiue her remitter, and where not. vide tit. Remitter.
22 Where the wife shall bee receiued upon default of her husband, vide tit. Receit.
23 Where the wife shal be examined upon a fine leuied, & where not, vide tit. Fines.
24 Where a partition made by the husband & wife, or by the husband only shal bind the wife, and where not, vide tit. Partition.
25 Where a demise by the husband to his wife shall bée good but not è contrà, 112.a*b† Vide tit. Coverture.

¶ Baron and Barony.

1 How Barons anciently were created & how at this day, 9.b* 16.b†*
2 The first creation of a Baron by patent, 9.b*
3 The estate and liuelihood of a Baron, 69.a*¶.83.b†
4 The relicte of a Baron, 69.b†.83.b†
5 Where a man called by writ dieth before hée sits in Parliament, no Baron, 16.b†
6 The forme of such writ, ibid.
7 Issue of Baron, &c. or no Baron how triable, 16.b*
8 What Monasteries & Bishoprics in England were & are held by Barony, 79.a* vide tit. Bishop.
9 Where a Baron and Péere of the Realme shall bée exempt from Iuries, vide tit. Challenge.

THE TABLE.

10 Where a Barony, &c. may be entailed, 20.a* vide tit. Taile, vid. Tit. Nobility.

¶ Barre vide tit. Pleadings.

The signification of the word, 372.a*

¶ Bastardy.

1 The Etymologie of the word, (Bastard) 243. b ¶ 244 a†
2 The severall kindes of Bastards, 244. a†
3 Bastard of what esteeme in law, 3. b†
4 By what name he may purchase Lands, and by what not, 3. b†
5 Bastard no child with in the Stat: of 32. and 34. H. 8. of wills, 78. a ¶. 123. b†
6 No consideration to raise an use, 123. a ¶
7 A Bastard brother, &c. no principall challenge, 157. a*
8 Issue borne after 9. moneths or 40. weekes of the husbandes decease, a Bastard, 123. b†
9 Where the Issue borne within marriage shall be reputed a Bastard, and where not, 244. a*
10 In what law, and to what purposes a Bastard eigne is esteemed a mulier, 245. a†
11 Where the dying seised of the Bastard eigne without interruption shal barre the right of the mulier, 243. b ¶ 244. a†. b*
12 Where such dying seised without a descent shall bee no barre, 244. a*
13 What seisin by the bastard during his life shall be sufficient to barre the mulier, and what not, 15. a ¶
14 Where a partition by the Bastard and mulier shall bind the mulier and her heires, vid. tit. Partition.
15 Where an entry by the Bastard and a descent after the death of the mulier his wife being prisement enseint shall barre the sonne borne after, 244. a*
16 Where the bastard die his wife enseint the entry of the mulier shall barre the issue borne after, 244 a*
17 Where the descent to the issue of the Bastard before entry shall barre the mulier, 244. a*
18 Where such dying seised of the Bastard shall barre an Infant or feme covert mulier, ibidem.
19 Where such descent of services, rents, reversions, &c. shal barre the mulier, 244. a ¶
20 Where such descent shall bind the mulier notwithstanding the wife of the Bastard be endowed, 244. a ¶
21 Where such descent upon the profession of the bastard in religion shall be a like barre, 244. a ¶. 248. b ¶
22 Where the collaterall heire shal aswell be bound by such descent as the mulier, 244. a ¶
23 Where two daughters a Bastard and mulier enter generally upon the death of the Bastard her Issue shall inherite a moitie, 244. a ¶. 368. a†
24 Where a Mordancester lyeth not against the Bastard, vid. tit. Mordancester.
25 Where a Bastard shall have his age, vide tit. Age.
26 Where the entry and dying seised of the sonne of the Bastard shall barre the mulier, 244. b.†
27 The entry of what persons shall avoid the estate of the Bastard, and of what not, 245. a* ¶
28 Where the agreement of the mulier to the entry of a stranger shall be a good claime to avoid the estate of the Bastard. 245. a ¶
29 What act shall be said an interruption of the possession of the Bastard, and what not. 245. b†*
30 Where the bastard after his entry shall be vouched only by reason of the warrantie of his ancestor, 376. b*

¶ Bedell.

1 The derivation of the word, 334. b*
2 The oath and office of Bedell, ibid.

¶ Benerth quid: 86. a†

¶ Berewica, seu Berewit quid: 116. a†.

¶ Berquarium, seu Bereseria quid: 5. b*

Bishop.

1 HOw all the Bishopricks in England and Wales are of the Kings foundation, and patronage, and held by Barony, 97. a* ¶ 134. a.* 344. a*
2 The number of them, & which are of ancient continuance and which of latter foundation, 94. a*
3 How anciently they were donative, & by what means they became Elective, 134. a ¶. 344. a*
4 Who may write to the Bishop to certifie Bastardy, mulierty, &c. and who not, 134. a ¶
5 Where and as to what acts the privation, or translation of a Bishop shall amount to a death, and where and as to what not, 329. a*
6 Where the confirmation of a grant of a Parson by the Bishop sole without the Deane and Chapt: shall be good, and where not, vide tit. Confirmation.
7 Where a Bishop shall not have aid of the King, vide tit. Ayde.

Vide tit. Corporation, & tit. Ordinary.

¶ Blood.

1 The severall bloods which a man is said to habe in him, 12. a*. b*. 14. a*
2 Who shall be said next of blood, as to severall purposes, 10. b. per tot. pag. 88. b*
3 What blood shall be said more worthy then other, and shall inherite before other, 12. b. per tot. pag. 14. a. per tot. pag.

Vide tit. Corruption of blood, Heire, Inheritance,

¶ Bokeland quid, 6. a ¶. 58. a†

¶ Bordarii, seu Borduanni qui, 5. b*

¶ Boscus quid, and what passeth by such grant, 4. b* ¶

¶ Bote quid, 127. a*

¶ Bouata terræ quid. 5. a ¶. vide Oxgange.

¶ Briga quid, 3. b ¶

¶ Bruera quid, & vnde, and what passeth by such grant 4. b ¶. 5. a†

¶ Burgage.

1 The Etymologie of the word, 108. b ¶. 109. a ¶.
2 The description of a tenure in Burgage, 108. b. ¶. 109. a†
3 Of what person such tenure may be, 109. a*

Vide tit. Knights Seruice, & Socage.

¶ Burgebote quid, 109. a†. 127. a*

¶ Burgengliſh, vide tit. Custome.

¶ Bye, & Byan quid, 5. b*

¶ Cambrige an ancient City, 109. b*

¶ Capacity.

1 What persons are of abilitie to enfeoffe, and what not, vide tit. Feoffement.
2 What persons are of ability to purchase, and what not, vide tit. Purchase.
3 Mutuus, surdus & cæcus of what things capable in law, & of what not, 8. a*
4 What persons capable of a Gardianship in Socage, & what not, vide tit. Socage.
5 What persons capable of an Atturnishp in the Kings Court, and what not, vide tit. Atturney.

What

6 What persons capable to be of a Jury, and what not, vid. tit. Challenge & Iuror.
7 What persons capable of Offices of State, or which concerne the Common weale, and what not, 107.b. per tot. pag. vide tit. Office.
8 Of what things an Infant or Feme couert capable, vide Infancy & Couerture.
9 Of what things a Monke capable, and of what not, 132.b*
10 Of what things an Alien capable to his owne vse, and of what to the vse of the King, vide tit. Alien.
11 The capacity of the Queene without the King, vide tit. Queene.

¶ Castle.

1 WHat things shall passe by the grant of a Castle, 5.a.*
2 What Castle may be built by a subiect, & what not, ibid.
3 Of what Castle a woman shall bee endowed, and of what not, vide tit. Dower.
4 What Castle may be diuided in a partition betweene parceners, and what not, 165.a ¶
5 Tenure by castle-gard, vide tit. Knights service.
6 Where such tenure remaineth albeit the castle be ruined, 83.a*

¶ Causa Matrimonij prælocuti.

1 WHere a man giue land to a woman causa, &c. though he mary her, or the woman refuse, hee shall retaine the land for euer, but not è conuersò, 204.a*
2 Where the feme in pleading may auerre such gift to bee causa matrimonii, &c. without shewing a deed, ibidem 226.a*
3 Collaterall warrantie no barre in a Causa Matrimonii, &c. vide tit. Warrantie.

¶ Certificate, vide tit. Tryall.

¶ Certaintie.

1 THe seuerall kindes of certainties, 303.a*
2 What certainties is required in a Count, Barre, Replic: Estoppell, &c. vide tit. Pleading & Estoppel.
3 Where there may be a certainty in an vncertainty, 96.a*

¶ Cessauit.

1 WHere it lyeth against the heire within age, 380.b ¶, vide tit. Age.
2 Where the tenant holdeth lands in seuerall counties by one seruice no Cessauit lyeth, 154.a † v. Stat. W.2.c.21.

¶ Challenge.

1 THe signification and deriuation of the word, 155.b ¶
2 The seuerall sorts of challenges, 156.a †
3 What shall bee said a principall cause of challenge to the array of the panell, and what not, 156.a † *
4 What shall be said a sufficient challenge to the Array for fauour, and what not, 156.b ¶
5 Where such challenge may bee made the King being partie, and where not, 156.a ¶
6 Where the partie notwithstanding his challenge to the Array found against him shall haue his challenge to the polles, 156.b †
7 Challenge to the polles what: and the seuerall kindes of such challenges, 156.a †
8 Challenges peremptory what: where admitted, and what number the party might challenge at the common Law, and what at this day, 156.b † *
9 The seuerall sorts of principall challenges to the polles, 156.b*
10 Where a Peere of the Realme ought to bee challenged, and if neither partie will challenge him he may challenge himselfe, 156.b ¶
11 What shall be said a good challenge for want of free hold, and what not, 156.b ¶, 157.a † vide stat. 2. H.5. cap 3. 27. Eliz. cap. 6. vide tit. Iuror.
12 Where an alien or villein may be challenged, 156.b ¶
13 What person may bee challenged for an insufficient hundred, and what not, 157.a †
14 What shall be said a principall challenge to the polles by cause of affection, and what not, 157.a * ¶. b per tot. pag.
15 Where the Plaintife may alleage a principall cause of challenge to the array, & pray proces to the coroners, and where he ought to haue a Venire facias to the Shiriffe, 157.b*
16 Where in Outlawry of treason issue is ioyned vpon a collaterall point, yet the partie may haue such challenges as if he had beene arraigned vpon the crime it selfe, 157.b ¶
17 What crime in a Iuror shall bee a principall cause of challenge, & what not, 6.a † * 158.a † vid. Stat. W.2.c.38. Artic. super Chart. cap 9. vide tit. Iuror.
18 At what time each challenge ought to be taken, & where the partie must shew the cause of his challenge presently, and where not, 158.a † * b †
19 How and by whom challenges shall bee tried, & to whom Proceste shall be awarded, 158.a * ¶ b †
20 Where a witnesse may be challenged, & where not, 6.b †
21 Where a man may be challenged to be a Iuror that cannot be challenged to be a witnesse, & è conuersò, 6.b †
22 Where a Nobleman being arraigned cannot challenge his Peers, 156.b* 294.a ¶
23 Where the 4. Knights Electors of the grand assise ought not to be challenged, 294.a ¶
24 Where & at what time the Iurors in a writ of right may be challenged, and where & at what not, 294.a ¶
vide tit. Iuror. Triall. & verdict.

¶ Champerty, vide tit. Maintenance.
The signification and deriuation of the word 368.b ¶

¶ Charge and Discharge.

1 WHere an estate in abeiance may bee charged, and where not, vide tit. Abeiance.
2 Where and how a moueable inheritance in lands may be charged, 343.b*
3 Where a charge shall surviue, and where not, 386.b*
4 Where the charge of tenant in taile shall binde his Issues, and where not, vide tit. Taile.
5 Where the estate of the wife shall be bound by the charge of her husband, and where not, 148.b*. vide tit. Baron & Feme.
6 Where the charge of one Ioyntenant shall be good against his companion surviuing, & where not, v. tit. Iointen.
7 Where the acceptance of an estate against common right shall subiect the partie to charges accruing since his title, 32.b † 33.a * 173.a ¶
8 Where a forfeiture for breach of a condition in law shall auoid all meane charges, and where not, vide tit. Condition & Forfeiture.
9 What charges shall be auoided by a Remitter, & what not, vide tit. Remitter.
10 Where tenant in taile discontinue for life, & after grant a rent charge, notwithstanding the death of the discontinuee the charge remaine, 145.a †
11 What things may be charged with a rent by grant or reseruation, & what not, vide tit. Rent, et Reseruation.
12 Where a charge by the Patron and Ordinary in time of vacation shall binde the succeding Parson, vide tit. Parson.
13 Where the charges of the ancestor shall bee good against his heire, and where not, vide tit. Annuitie et Heire.
14 Where the disseisee, &c. shall not auoid the charge of the disseisor, &c. against his owne confirmation, vide tit. Confirmation.

¶ Charters.

1 WHere they passe as incidents to the land, and where not, 6.a †
2 Where a detinue lyeth for Charters, and what shall bee said

said a good plea in detinue for Charters, and what not, vide tit. Detinue.

3 Where detainer of Charters shall be a good plea in dower by the Gardian, and where not, vide tit. Dower.

¶ Chase, vide Forest.

¶ Chattels.

1 The severall sorts of Chattels, 118. b *

2 Where they shall descend or goe in succession, and where not, 9. a †. 18. b * 46. b ¶. 185. b ¶. 388 a *

3 What Chattels are grantable without deed, and what not, 85. a per tot. pag.

4 Where a right of Freehold may drown in a Chattell, vide tit. Freehold.

5 In what respects tenant by Stat. Merchant, Staple, &c. said to haue a freehold, & in what but a Chattell, 42. a * 43. b *

6 Where a freehold and a chattell of the same land may stand in one and the same person, simul & semel, and where not, vide tit. Freehold.

7 What chattels of the wife the husband shall haue after her death, and what not, vide tit. Baron and Feme.

8 Where a freehold may be limited in a chattell, 147. b † vide tit. Executors & freehold.

¶ Cheuage quid? 140. a *

¶ City.

1 The description of a Citie, 109. b †

2 For what purposes Cities first instituted, 109. b *

3 The number of Cities in England, ibid.

4 Euery Citie a village but not è conuersò, 115. b. ¶

5 Citizen not capable of the performance of an honourable seruice, 107. b † vide tit. Village.

¶ Claime, vide tit. Continuall Claime.

¶ Clergie.

1 The severall sorts of Ecclesiasticall persons, 93. b ¶

2 The state of the clergie in England at this day, 94. a *

3 The severall orders of Friars formerly in this realme, vide tit. Monke.

4 How Clergie-men anciently excelled in the knowledge of the common Law, and the names of diuers that had principall offices of Judicature, 304. b † vide tit. Bishop, & Deane and Chapter.

¶ Coleberti qui? 5. b * 86. a †

¶ Collusion, vide tit. Couin.

¶ Combe, quid? 5. b ¶

¶ Commote quid? 5. a *

¶ Commission.

Where a Commissioner to examine witnesses may be challenged to bee a Juror in the same cause, and where not, 157. b †

¶ Common.

1 Common whence so called, 122. a *

2 The severall kindes of Commons, 122. a *

3 Where by purchase of parcell of the land in which, &c. the whole Common shall bee extinct, and where, not, 122. a *

4 Where a disseisee cannot take benefit of a common appendant before recontinuance of that to which, &c. secus of an aduowson appendant, 122. b † vide tit. Appendants.

5 Where by descent of part of the land in which, &c. to the commoner, the common shall bee apportioned, and where not, vide tit. Apportionment.

6 Prescription to haue solam Communiam, and to exclude the owner, void, secus to haue solam vesturam, or pasturam, 122. a ¶ 165. a †

7 Where the Lord claime common appendant to his manor, the eschеat of a tenancy no increaser of the common, 122. a ¶

¶ Conclusion, vide Estoppell.

¶ Condition.

1 The diuision of conditions, 201. a ¶. b † *

2 The description of a condition in deed, 201. a *

3 What words shall make a condition, & what not, 203. a ¶ b. 204. a & b

4 Where the cause of a grant shall amount to a condition, and where not, 204. a *

5 Where a Proviso shall amount to a condition, where to a limitation, & where to a couenant, 203. b * 237. a *

6 What words shall amount to a condition in case of a lease for yeares, 204. a ¶

7 Where by entry for a condition broken the parties shall bee in their former estates as to all purposes, and where not, 30. b * 103. a ¶. 202. a ¶. b † 218. b *

8 Where vpon a condition of re-entry for not payment of a rent & reteiner vntill satisfaction, the profits after entry shall bee accounted as parcell of the satisfaction, and where not, 203. a *

9 What estate the feoffor gaineth vpon such re-entry, 203. a *

10 Where notwithstanding such condition to retaine, the feoffee vpon tender of the rent may ouste the feoffor, 202. b ¶. 203. a †

11 At what place and time a demand of a rent to enter for a condition broken shall be sufficient, and at what not vide tit. Demand.

12 Where a condition subsequent is against law or impossible at first, or becometh after impossible by the Act of God, the estate of the feoffee shall be absolute, 206. a, b, † * 219. a †

13 Where the condition of an obligation or recognizance, &c. becommeth impossible by the Act of God, the obligation, &c. is saued, 206. a ¶

14 Where the condition of a bond being against law the bond it selfe shall be voyd, and where not, 206. b *

15 Where a man shall neuer take aduantage of a condition where the not performance commeth by his owne act or default, 206 b †. 209. a †

16 Where a lease and release shall bee a good performance of a condition to make a feoffment, 207. a ¶

17 Where an Assignee, or the feoffee himselfe after assignement may tender money in performance of a condition, 207. b * ¶. 208. a †

18 When no time is limited for performance of a condition where the party shall haue time during his life, and where it ought to bee performed in conuenient time, 208 a * ¶. b. per tot. pag. 219. a † * b †

19 Where a condition is to bee performed to a stranger, a tender and refusall shall giue the feoffor or obligee a title of entry or forfeiture, and where not, vide tit. Tender or Refusall.

20 Where a condition is broken for not payment of a rent the bringing of an assise, distresse, or acceptance at a day after shall be a good dispensation, 211. b * ¶. vide tit. Acceptance.

21 Where the acceptance of a collaterall thing in satisfaction shall dispense with the performance of a condition, and where not, vide tit. Acceptance.

22 Where a condition shall bee said performed albeit the words be not pursued, and where not, 213. a * 218. a * 219. b * ¶

23 What persons may take aduantage of a condition, and what

what not, 214. a * ¶. b. 215. a. & b. 379. a †. vide Stat. 32. H. 8. cap. 34. vide tit. Assignee.

24 Where the heire may take aduantage of a condition which his auncestor could not by possibility, 214. b ¶

25 Where a condition may be apportioned, and where not, vide tit. Apportionment. 7

26 Where a condition which createth an estate, shall bee good without deed, 216. a ¶

27 Where vpon a grant for yeares conditionally to haue fee, the fee shall bee said to bee in the grantee before performance of the condition, and where not, 216. b. 217. a. & b. 218. a †

28 A lease to a man and a woman vpon condition which of them first marry shall haue fee, and they entermarry, no fee shall accrue, 218. a *

29 Where a lease is made with condition to haue fee vpon payment of money, the attainder and execution of the Lessor before the day shall hinder the accruer, 218. a *

30 Where notwithstanding the deuesting of the freehold or fee by a condition subsequent the former interest of the partie shall remaine in him, and where not, 218. b † *

31 Where a man may take aduantage of a condition without entry or claime, and where not, 218. a. * ¶. b †. ¶ 216. b * ¶. 237. a * 379. a †

32 Where a condition is to make a gift in frankmariage to one with the cosin of the feoffor, a gift to him for life shall be a good performance, 212. b *

33 Where a condition is to make a gift in frankalmoign to a lay man, a gift to him for life shal bee a good performance, 219. b. *

34 Where a condition is to make a lease for life to a woman without impeachment of wast, a lease to her & her husband without such clause, shal be a good performance, 219. b ¶. 220. a †

35 Where a condition is to reinfeoffe the feoffor & his heires, a feoffment to the heire of the feoffor to haue to him & his heires shall be no performance, 220. b †

36 Where a feoffment is made vpon condition of refeoffment, what act by the feoffee shall bee said a breach of such condition, and what not, 221. a b. 222. a b *

37 Where the feoffee is once disabled no possibility after can enable his performance, secus of a disabilitie of the part of the feoffor, 221. b ¶. 222. a †

38 Where a Tenant of the King by licence make a feoffment vpon condition of re-feoffment, a feoffment to his heire after his death shal bee no performance, 222. a. ¶ b †

39 Where an aduowson is granted vpon condition of regrant, a regrant after the Church voydes is no performance, 222. b †

40 Where the restriction of alienation by the condition of a gift or conueyance shall be good, and where repugnant, 223. a per tot. pag. b †

41 To what intent a condition that restraines the donee in taile to alien shall bee good, and to what not, 223 b * ¶ 224. a † ¶. b †. 379. a *

42 Where a condition restraining an Infant, Baron, and feme or an Ecclesiasticall corporation to alien shall bee good, and where not, 224. a *

43 Where a condition that tenant in taile may alien for the benefit of his issues shall be good, 224. b †.

44 Where a condition to enter vpon the alienation & death of tenant in taile without issue shall bee a good preuention of a discontinuance, 224. b * ¶. 225. a †

45 Where a condition consisteth of seuerall parts in the coniunctiue, disiunctiue, or both, how it shall be construed, and when said to be performed, 225. a † *

46 Where and by whom a deed of condition being pleaded ought to bee shewed in court, and where and by whom, not, vide tit. Deeds.

47 How a man may bee ayded by a condition without a deed, 226. a ¶. b.

48 The description of a Condition in Law. 233. b. *

49 Where the breach of a condition in law shall be a forfeiture of the office or estate of an Infant, or feme couert, and where not, vide tit. Couerture & Infancy.

50 Where an entry or recouery by reason of a condition in law shall auoyd precedent charges, and where not, 233. b ¶. 234. a †

51 What worde in a last Will shall make a condition that cannot in a deed, 236. b †

52 What things may bee done vpon condition, and what not, 274. b. †

53 Where and what assent to an act may bee vpon condition and what not, 300. b ¶

54 Where the heire shall enter for a condition broken albeit no right in the land descend, 202. a * 336. b *

55 Where vpon a gift, &c. a condition is reserued to a stranger the donor himselfe shall take aduantage of it, and not the stranger, 379. a * ¶

56 Where a condition may stand good for part, and bee void for other part, 379. a *

57 Where an alienation shall extinguish a condition or power of reuocation, and where not, 265. b †. 379. a ¶ b †

58 Where a lease for life is made with condition to haue fee vpon alienation of the reuersion, vpon alienation by fine there shall be no accruer, 378. b *

59 Where in a gift in taile a condition vpon alienation of the donee, that his estate shall cease and remaine ouer shall be void, 377. b. 378. a b. 379. a.

¶ Confirmation.

1 The Etymology and definition of a Confirmation, 295. b. *

2 The forme of a confirmation, ibid.

3 The seuerall kinds of confirmations 295. b. ¶

4 What shall be said good words of confirmation, & what conueyance shall amount to a confirmation, and what not, 301. b. * ¶ 302, a. per tot. pag.

5 Where the same words shall amount to a grant and a confirmation of one & the same thing, 302. a. †.

6 Where priuity is requisite in a confirmation, & where not, 296. a. † 305. b. †

7 Where a confirmation to the lessee for yeares of a tenant for life or disseisor shall bee good, secus of a Release, 296. a. b. †. 308. a. †

8 Where a lease is made to begin at a day to come, a confirmation to the lessee before the day shall bee voyd, 296. b. †

9 Where a confirmation of part of the estate shall be a good confirmation of the whole, and where onely for that part, 296 b. ¶. 297. a † *

10 Where a confirmation to him in the reuersion or remainder shall enure to the particular estate in possession, but not è conuerso, 297. a. ¶. b. †. 298. a. †. vide tit. Releases.

11 Where tenant in taile hath a reuersion in fee expectant, a confirmation of the estate taile shall not extend to the reuersion, 297 a. ¶

12 Where two leases for yeeres are in being determinable upon the death of a tenant for life, & hee in the reuersion confirme the last & after confirme the first lease, by death of the tenant for life the first shall determine & the last continue, 296. a. *.

13 Where two ioyntenants be one for life, & the other in fee, a confirmation to the ioyntenant in fee for his life shall extend

extend to his companion, and the whole fee simple also, 297.b.†

14 Where one disseisor by the confirmation of his disseisee shall hold out his companion, and where not, 298. a. ¶.b.† *

15 Where a confirmation to tenant for life to haue his estate to him and his heires shall make no enlargement, otherwise where it is to haue the land to him, &c. 291. b.¶.299 a †

16 Where a confirmation to the husband and wife seised in the right of the wife for life, shall enure to the husband in remainder for his life, 299.a.¶.b.¶.

17 A confirmation to baron and feme, seised for life in right of the feme, to haue to them and their heires, how it shall enure. 299.b.†

18 A Confirmation to baron and feme tenants for life by seuerall mottes to haue to them and their heires, how it shall enure, 299. b †

19 A confirmation to tenant for life and him in the remainder for life to haue to them and their heires, how it shall enure, 299.b. *

20 Where after a gift to two men and the heires of their bodies the donor confirme to them & their heires how it shall enure, 299.b.*

21 Where a confirmation to baron and feme possessed of a terme for yeares in right of the feme shall enure to them for their liues in ioyntenancy, 300 a.†

22 Where the re-entry or recouery of the disseisee shall not auoyd the charge of the disseisor or his heire against his owne confirmation, 300.a.*

23 Where the feoffor by entry for a condition broken shall not auoid the charge of the feoffee against his owne confirmation, 300.a.*.301.a.¶

24 Where the licence of the Patron and Ordinary to the Parson to grant a rent shall bee a good confirmation of the same grant, 300 b.*

25 Where the confirmation of the grant of a Parson by the Bishop sole without the Deane & Chapter shall bee good, and where not, 300.b.* 329 a.¶

26 Where the grant of a Parson with the confirmation of Patron and Ordinary shall binde the successor during the continuance of the Patrons estate, 300.b.* ¶

27 Where the grant of a Parson confirmed by another Parson his patron shall binde onely during his life without the confirmation of the patron paramount, 300. b.*

28 Where tenant in taile being patron confirme, and after discontinue the grant shall bind during the discontinuance & if the taile be barred for euer, 300.b. ¶

29 Where a Bishop hauing two Chapters make a grant, the confirmation of the one without the other shall not bind his successor, 301. a. †

30 Where a disseisor make a Charter of feoffement, and a letter of atturney to make liuery, the confirmation of the disseisee before liuery is voyd; secus of such Charter by a Bishop & confirmation by the Deane and Chapter or of the grant of a reuersion before atturnment, 301.a.†

31 Where a Bishop at the Common Law granted land to the King, the confirmation of the Deane & Chapter before inrolment was good to bind the successor, albeit the confirmation was neuer inrolled, 301 a.†

32 Where tenant for life grant a rent in fee the confirmation of him in the reuersion shall make the rent good for euer, 301.a.*

33 Where the lease of tenant for life & him in the reuersion shall bee said the lease of the tenant & confirmation of him in the reuersion & where è conuersò, 45.a.* ¶

34 Where the grant of the bargainor & bargainee before inrolment shall be said the grant of the bargainor & confirmation of the bargainee, but è conuersò after inrolment, 147. b.*

35 Where the heire of the disseisor and the disseisee ioyne in a feoffment it shall bee construed the feoffment of the heire and confirmation of the disseisee, but è conuerso if the disseisor himselfe and the disseisee had ioyned, 302.b.† ¶. vide tit. Feoffment.

36 where a tenure may be abridged by a confirmation, secus of a Common or rent charge, 305. a * ¶

37 where the reseruation of a new tenure vpon a confirmation to the tenant shall be void, 305. a. ¶. 306, a †

38 A confirmation or release by the Lord paramount to the tenant to hold by lesser seruices void, 305. b † *

39 where the Lord release or confirme to his tenant in Chiualry to hold by Knights seruice onely for all seruices and demands, yet ward, mariage, &c. shall continue. 305. b. ¶

40 where a confirmation to an Abbot tenant to hold in Free almoigne shall be good, 306. a * ¶. b †

41 where a stranger seise & detaine a villaine, a confirmation to him by the Lord void, 306. b. *

42 where a confirmation to the grantee for life of a rent shall be good by way of enlargement and where not, 308.a. * ¶

43 where a confirmation to lessee for life of his estate the remainder ouer shall be sufficient to passe the remainder, 317.a. ¶. vide tit. Atturnment.

¶ Constable, vide tit. Marshall.

The seuerall acceptions in Law of the word, 234, b.†

¶ Continuall Claime.

1 The description of a continuall claime, and whence so called, 250.a.¶.b †

2 where a continuall claime by him that hath right and cannot enter shall auoid a descent, 250.b.† *

3 where the heire shall take benefit of a continuall claim made by his ancestor to auoid a descent, and where not, 250 b.¶

4 where the continuall claime of him in the reuersion or remainder shall auoid a descend in the alienee of tenant for life, 251. a. †

5 where the claime by him in the remainder for life shall auaile him in the remainder in fee as to the auoidance of such descent & where not, 251.a. ¶.b. 252. a.*

6 where the suruiuing ioyntenant shall take benefit of a continuall claime made by his companion, 252. a.*

7 where and to what purposes a continuall claime shall amount to an entry, and seisin & where & to what not, 253.b. per tot. pag. 254.a.† 263.a *

8 where such claime out of the view of the land, & where within the view shall be sufficient, and where not, 254. a. ¶.b† *

9 where a claime shall amount to an entry to perfect a liuery within the view, & where not, vide tit. Liuery of seisin.

10 within what time a continuall claime ought to be made at the Common Law, and within what at this day. 254.b.¶.255.a.256.a *. vide Stat 32.H.8.cap.33.

11 where such claime at the Common Law shall auoid all manner of descents hapning within the yeare & day. 255. b.

12 where such yeare & day to auoid a descent shall not bee accounted from the disseisin but from the claime, 256. a.†. *

13 where the continuance of possession after euery such claim shall be a disseisin, for which the party may haue trespas or a forcible entry if it be with force, 256. b. 257.a.

14 where such claime made by the seruant of him that right hath

hath vpon his commandement shall bee sufficient to auoid a descent, and where not, 257.b.* ¶. 258.a.& b. 259.a†

16 Where a claime of goods shall amount to a seisure, and where not, 118.b.¶.

16 Where the bringing of an action shall amount to a claim, 263.a.*.¶.145.b.†.

17 What claime shall hinder a Remitter and what not, vide tit. Remitter.

18 Where the husband discontinue the land of his wife vpon condition, by the entry of his heire for the condition broken the state shal best in the wife without entry or claime, 202.a.*.336.b* 337.a†

19 Where an agreement to the entry of a stranger in the name of him that right hath within the 5. yeares shall bee a good claime to auoid a fine, 245.a* 258.a†.

20 Within what time claime ought to bee made after iudgement in a writ of Right, or vpon a fine leuied at the Common Law, 254.b¶. 262.a*. vide tit. Fines.

21 Non Claime no preiudice to an Infant at the Common Law, otherwise to a feme couert, 262.b†. vid. tit. Fines. vide tit. Discontinuance, & Entry Congeable.

¶ Contract.

1 The derivation of the word, 47.b.*

2 What shall be said a sufficient contract whereupon to ground an action of debt, and what not, 162.b.¶.

¶ Conusans of Pleas.

1 Of what matters the Ecclesiasticall Court ought to haue Conusans and of what not, 96.a¶.b†.*.

2 No Conusans grantable in an attaint, vid. stat. 23.H.8. cap. 3.

3 No Conusans grantable in a Quare impedit, vide tit. Quare impedit.

¶ Cope, quid. 4.b.¶.5.b.¶.

¶ Copyhold.

1 The signification of the word Copia, 57.b.¶.

2 The description of a tenancy by copy. 57.b.¶. 58.a†.

3 Whence so called, 60.a†

4 How Copiholders in ancient times where called, 58.a† 61.a.*.62.a.¶

5 By what things a Copyhold custome ought to bee supported, 58.b.*.

6 What things may bee granted by Copy, and what not, 58.b.†¶

7 By what persons admittances & voluntary grants by Copy ought to be made, & by what not, 58.b.†.

8 Where a grant by Copy shall be good by one who is not dominus pro tempore, 58.b*

9 By what means Copihold land or right may bee transferred ouer & by what not, 58.b.¶ 59.a† 61.b.*

10 The forme of a Copyhold surrender, 59.a*.

11 Where such a surrender out of the Court of the Lord shall be good & where not, 59.a.¶.61.b.* 62.a†

12 What act, &c. by the tenant shall bee said a forfeiture of his copyhold estate & what not, 59.a.*.63.a†

13 To what purpose the Lord shall bee said in by the surrender of his copihold tenant & to what not, 59.b.†.

14 Where the interest of the copyhold Estate shall be bound by the surrender, and the admittance of the Lord shall shall haue relation vnto it, 59.a† 62.a†

15 Where the estate of Cestuy que vse shall ensue the limitation in the surrender & not in the admittance of the Lord 51.b† 61.b¶

16 Where the Lord shall bee compelled to make admittance according to the surrender to him which was dominus pro tempore before, 59.b.*

17 Where a custome to haue fines of copihold tenants vpon the alteration of the Lord or tenant shall bee good and where not, 59.b¶

18 Where fines incertaine are vnreasonably exacted the copiholder shall not bee compelled to pay them, 59.b.¶ 60.a†

19 How copiholders shall implead, & be impleaded, and the forme of such plaint, 60.a*

20 Where a copihold may be intailed, and such intaile also docked by surrender, 60.b†

21 What remedy a copiholder hath against his Lord for an ejectment without cause, 60.b.*¶ 61.a† 62.b¶ 63.a†

22 What remedy a copihold tenant hath for an erroneous recouery in the Court of his Lord, 60.a.*

23 The office & duty of the Lord of a copihold manor. 59.b*

24 Where admittances by the Lord out of the Court of Manor shall be good, 61.b*

25 Where the wife of a copyholder shall be endowed, and where not, 33.b.¶. vide tit. Dower.

26 Tenants by the verge why so called, & how they differ from tenants by copy. 61.a.*

27 The office and duty of a Steward of a copyhold manor, Vide Steward.

28 The office and duty of a Bailife of a copyhold Manor, vide tit. Bailife.

29 The difference betweene tenants at will, by custome, & by the common Law, vide tit. Tenant at will.

¶ Corody.

Where a house or land may be appendant to a Corody, 49.a*. vide tit. Appendants.

¶ Corporation.

1 The description of a Corporation, and why so called, 250.a*

2 The diuision of corporations, 2, a ¶. 250.a*

3 How many seuerall wayes a Corporation may commence and be established, 250.a*

4 What corporation shall take a fee simple without the word (successors) & what not, 94.b*

5 Where a sole corporation shall take a fee simple without the word (successors) & where not, 9.b.¶. 94.b.¶

6 Where the priuiledges belonging to a corporation by prescription shall determine by the change of the same corporation, & where not, 102.b.¶

7 Where by the dissolution of a corporation their lands shall reuert to the donor, & shall not escheat, 13.b*

8 Where & what corporation may maintaine a writ of right, & where & what not. 341.b. per tot. pag.

9 Where a disclaimer, or other act by an Abbot, Bishop, &c. shall bind their successors, & where not, 103.a*

10 The power which Ecclesiasticall corporations had to dispose of their lands, &c. at the common Law, & how they are now restrained by statutes, 44.a.†. 300.b¶ 301.a* 325.b¶.342.a†

11 What leases at this day are good by a Bishop, Deane, & Chapter, &c. and what not, 44.a. & b 342.a†. vide tit. Leases.

12 Where & what corporation may not & receiue homage & where & what not, 65.b¶.66.b¶. 67.a† 341.b†. vide tit. Homage.

13 Where a grant to a corporation aggregate, albeit the head of the corporation be wanting at the time, shal be good, & where not, 264.a†

¶ Corruption of blood.

1 Where & what attainder shal worke a corruption of blood, & where & what not, vide tit. Attainder.

2 In what manner & degree the blood said to bee corrupted by Attainder, 391.b†

3 By what meanes the Blood corrupted by Attainder may bee restored and by what not, 8.a.*.391.b.*.¶. 392.a†

Where

4 Where corruption of blood in the father shall disable the issue to inherite to his mother, 12. a ¶

5 Where corruption of blood in the father shall disable the son to inherit to his brother, & where not, 8. a *

6 Where corruption of blood in the eldest son shall hinder a descent to the yongest, 13. a ¶ 392. a *

7 Judgement to bee hanged by Martiall law no corruption of blood, 13. a ¶. vide tit. Heire.

¶ Cosinage.

Where & by whom a writ of Cosinage lieth, 160. a ¶ Where it lyeth for a rent charge or secke, ibid.

¶ Costs, vide tit. Damages.

Cotterelli, & Cottagium quid, 5. b * 56. b †

¶ Couenant.

1 Where an assignée shall take aduantage of a Couenant without being named in the deed, & where not, 384. b ¶. 385. a *

2 Where a man shall bee bound by the couenants & conditions in an Indenture albeit he neuer sealed the deed & where not, 230. b ¶ 231. a † *

3 Where a couenant in deed shall destroy the conenant in law, & where not, 384. a ¶. vide tit. Warranty.

4 A Release of all actions & suits no discharge of a couenant before it be broken, secus of a release of couenants, 292. b *

5 Where upon a couenant to pay money at seuerall dates after the first default an action of couenant lyeth, otherwise of Debt vpon an obligation, 292. b ¶. vide tit. Payment.

¶ Couerture.

1 The signification of the word and whence so called, 112. a ¶

2 Where a feme couert may be a purchasor, & where the estate shall be said to be in her before the agreement of her husband, 3 a † 356. b *

3 Where laches shall bee adiudged in a feme couert & where not, 246. b † * 352. a † 356. b ¶ vide tit. Infant.

4 Where a feme couert may sue & be sued without her husband, 132. b ¶ 133. a per tot. pag. vide tit. Banishment.

5 Where the breach of a Condition in law shall bee a forfeiture of the office or estate of a feme couert, & where not, 233 b ¶ vide tit. Forfeiture.

6 To what purposes a procurement precedent or agreement subsequent shall make a feme couert a disseisoresse & to what not, 357 b *

7 Where the dying seised of a bastard without interruption shall bar a fem couert mulier, vide tit. Bastard.

8 No priuiledge of Non-claime to a feme couert at the common Law, 262. b †

vide tit. Baron and Feme.

¶ Couin and Fraud.

1 The description & derivation of the word, 357. a ¶ b † 357

2 Where Assignement of Dower or other lawfull Act compassed by Couin, shall bee auoided, 35. a. *. 357. b †

3 Where Couin in disseising the discontinuee & introoking the party that right hath, shall hinder a Remitter, & where not, vide tit. Remitter.

4 Where upon a condition of payment of money, a couinous payment in shew shall bee no performance, 209. b *

5 Where & how fraudulent conueyances, executions, &c. shall bee auoided at this day, & against what persons they shall be void, & against what not, 3. b ¶. vide stat. 13. El. cap 15. & 27. El. cap. 4.

6 Where a Recouery by couin against a tenant for life shall bee a forfeiture of his Estate, 362. a. † * 356. a. ¶. vide stat. 14. El. cap. 8. & tit. Forfeiture.

7 Where a termor for yeares, gardian, tenant by stat. merchant, Elegit, &c. shall falsifie a recouery by couin had against him in the reuersion, & where not, 46. a † * vide stat. 21. H. 8. cap. 15.

8 Where the fraudulent conueyance of the tenant to his heire shall not preiudice the Lord of his Wardship, reliefe, &c. vide stat. Merton. cap. 6. & tit. Wardship.

9 Where a collaterall warranty after a disseisin by couin shall be no bar, 366. b ¶. vide tit. Warranty.

¶ Count. Vide tit. Pleadings.

1 The Etymology & signification of the word, 17 a †

2 The office and nature of a Count, 17. a † 303. b ¶

3 Where the count varying from the words of the writ shal be good & where not, 26. b ¶ 54. b † 335. b † 344 a †. vide tit. Writs.

¶ Court.

1 The definition and derivation of the word, 58. a *

2 The diuers kindes of inferiour Courts & the seuerall Judges of them, ibid.

3 Court Baron whence so called, & in what place such court ought to be holden, & in what not, 58. a * ¶

4 What Courts are of record, and what not, 117. a. ¶ 168. b *

5 The court of Parliament and its iurisdiction, vide tit. Parliament.

6 The antiquity & iurisdiction of the courts of kings Bench & common Pleas, 71. b † *

7 The Admirals court & its iurisdiction, & according to what law they proceed, vide tit. Admirall.

8 The court of the Marshall & its iurisdiction, & according to what law they proceed, vide tit. Marshall.

9 The Couney court, turne of the Sherife, & court Lect, 168 a ¶ b *

10 The Ecclesiasticall court & its iurisdiction, 96. a ¶ b † * 344. a ¶

¶ Cui in vita.

1 Where such writ lyeth by the wife after the death of the husband vpon his alienation & discontinuance, & where not, vide stat. W. 2. cap. 3.

2 Where vpon a recouery in an action of waste against the husband & wife by default, the wife shall haue a Cui in vita, 355 b *

vide tit. Quod ei deforceat, & Resceit.

¶ Curtesie of England.

1 The description of a tenant by the Curtesie of England & why so called, 29. a † * 30 a *

2 Of what things the husband shall be tenant by the curtesie, & of what not, 29. a ¶ b † 30. b † *

3 Of what estate of the wife the husband shall be tenant by the curtesie, & of what not, 29. b *

4 Where the husband shall bee tenant by the curtesie of an estate in suspence, and where not, 29. b *

5 Of what seisin of the wife the husband shall be tenant by the curtesie, & of what not, 29. a † 40. a *

6 Where a seisin shall be sufficient to make a tenancy by the curtesie that shall not make a possessio fratris, 15. b †

7 Where the husbād shall be tenant by the curtesie of a seisin of his wife had by intrusion vpon the King, 30. b †

8 What time of hauing issue sufficient to entitle the husbād to be tenāt by the curtesie & what not, 29. b * 30. a *

9 What manner of issue sufficient to entitle him & what not, 29. b ¶

10 Where the husband shall bee tenant by the curtesie without hauing issue, 30. a † 111. a †

11 Where the husband shall bee tenant by the curtesie of an estate

estate of the wife determined, & where not, 30. a †
12 What things necessary to a tenãcy by the curtesie, 30 a *
13 To what purposes the estate of the husband after issue is respected during the life of the wife, 30. a * 67. a †. 124. b †.
14 Where the husband after the death of the wife cannot waiue his estate by the curtesie & claim by deuise, 30 a *
15 Where the crying of the child is not necessary to entitle the husband by the the curtesie, 30. a *
16 Where the husband shall be tenant by the curtesie albeit the issue cannot by possibility inherit, and where not, 29. a * 40. a †
17 In what cases a man by hauing issue shalbe tenãt by the curtesie where a womã shal not be endowed, 30. a ¶ b † *
18 Where tenant by the curtesie after assignment of his estate shal be liable to wast & where not, vide tit. Wast.
19 Where after assignment he shall attorne to the grant of a reuersion, vide tit. Attornment.
20 Where the warranty of a tenant by the curtesie shall bee a bar to the heire and where not, vide tit. Warranty.
21 Where a feoffment vpon condition shall extinct a title to be tenant by the curtesie notwithstanding an entry for condition broken, 30. b *

¶ Customes.

1 The deriuation and seuerall acceptions in law of the word (consuetudo) 58. b ¶
2 What things necessary to the essence of a custome, 110. b †. 113 b. ¶
3 The difference betwéen a custome & a prescription, 113. b
4 In what places a custome may be alleaged, and what customes may bee alleaged in vpland Townes, and what in Boroughs, 33. b ¶ 110. b *
5 Where a custome may bée alleaged against an act of Parliamẽt, & where not, v. tit. Prescription, & tit. Deuise
6 Customes against reason void, 59. b ¶ 62. a. *. 140. a *. 141. a
7 Where a custome within a manno^r to haue a fine of curry tenant for marying his daughter without the Lords licence shall be good, and where not, 139. b ¶. 140. a †
8 In what Customes a Prescription ought to be alleaged, & in what not, 175. b *
9 Where by custome a freehold & inheritance may passe by surrender in the court of the Lord, v. tit. Surrender.
10 Custome that an Abbot or Bishop shall pay relicfe good, vide tit. Relicfe.
11 Custome that the heire of tenant in Socage shall be in ward to the Lord good, vide tit. Wardship.
12 Custome of Gauilkind, vide tit. Gauilkind.
13 Custome of Borough English what, 110. b 240. b *
14 Custome that the yongest sonne shall inherite if he bee not of the halfe blood, good, 140. b ¶
15 Custome that the eldest daughter or sister onely shall inherite, good, 140. b ¶.
16 Vsage, & not vsage, a good argument in Law for proofe or disproofe of anymatter, 81. a. * b *. vide tit. Prescription.
17 Customes reasonably by whom triable 56: b.

¶ Damages.

1 The proper signification of the word, 257. a *
2 Where vpon a ioynt action & recouery by parceners damages shall enure to them in seuerality, 198. a ¶
3 Where vpon a recouery in wast by the Aunt & Niece for wast done in the life of the other sister, the Aunt only shall recouer damages, 198. a ¶
4 Where vpon a recouery in waste by tenant for life and him in the reuersion, he in the reuersion only shall recouer damages, 42. a *
5 Damages not the principall in an action of waste, vide tit. Wast.
6 Where damages shall be recouered in a writ of dower & where not, vide tit. Dower.
7 Where in an action of trespasse damages shall be recouered for the entry onely, & where for all the meane occupation, 287. a †
8 Where in a writ of Entry vpon the stat. of R. 2. damages onely shall be recouered for the entry, & not for the meane profits, 257. a *
9 What damages and costs the plaint. shall recouer in a writ of forcible entry, vide stat. 8. H. 6 cap 9.
10 Damages not recouerable in a Quare impedit at the Common Law, vide tit. Quare impedit.
11 Where vpon a feoffment by a disseisor to diuers persons the survivor not agreeing to the feoffment shall bee excused of damages in a writ of entry, 359. b ¶ 360. a vide Stat. Glocest. cap 2.
12 Where in a Præcipe the tenant plead Non tenure, or disclaime, the demandant may auerre him tenant to recouer his damages, vide tit. Auerrement.
13 Where the defendant in an Appeale shal recouer damages & where not, vide tit. Abetrors.
14 Where the plaint. may release damages and haue iudgement of the principall, 355. b ¶

¶ Day.

1 The legall acception of the word, 134. b *
2 The common dates betweene summons in reall actions and the returne, 134. b. *
3 The dayes anciently allotted to felons in triall of life to make their defence, & the course of proceeding in the Kings bench vpon indictements at this day, 134. b *
4 What are said dies speciales, and what dies gratiæ, 134. b ¶ 135. a †
5 In what cases such dayes are granted, & in what not, ib.
6 To what purpose the day of Nisi prius, and the day in banke are said all one, 135. a †
7 What are said dies Iuridici & dies non Iuridici, 135. a *
8 What dies artificiales, & dies naturales, 155. a ¶
9 At what time for raine nations begin to account the day, 135. a ¶
10 What shall be said a year, half a year, a quarter of a year, & what a moneth in legall computation, 135. b. †
11 Where an action of debt lieth not for mony to bee paid at seuerall dayes vntill all the dayes bee incurred, vide tit. Debt & Payment.
12 Where the common law gaue the disseisee a yeare & a day after his claime to enter, the day of his claime shall be taken inclusiuely, 255. a ¶
13 Where in a Protection protecture for one year, the day of the Teste shall be taken inclusiuely, 130. b *
14 An aduise to Students in spending the day, 64. b * vide tit. Time.

¶ Deane & Chapter.

1 The Etymology of the word Deane, 95. a †
2 The manner how Deanes come in, & are installed at this day, 95. a *
3 Chapter, what, & the seuerall sorts of Chapters, 95. a * vide tit. Bishop, Clergy, & Corporation.

¶ Debt.

1 Where an action of debt lyeth for rent, & where not, 47. a † b * 57. b; †
2 What shall be said a good plea in debt for rent, 47. b ¶
3 Where an action of debt lieth for Relicfe, Escuage, &c. & where not, 47. b * 83. a ¶
4 What shall be a sufficient contract whereupon to ground an action of debt, & what not, vide tit. Contract.

5 ¶ Where vpon payment of money at seuerall dayes an action of debt lyeth not before the last day bee past. 47. b. * 292. b ¶
6 Where an action of debt lyeth by the grantée of a reuer. before attornment, & where not, vide tit. Attornment.
7 Where the Executors shall haue an action of debt for the arrerages of rent, which the testator himselfe could not, 146. b †
8 Where the acceptance of a lesser summe shall be a good barre in debt vpon an obligation, & where not, vide tit. Acceptance.
9 Where the acceptance of a collaterall thing in satisfaction shall be a good barre in debt vpon an obligation, vid. ibid.
10 Where an action of debt lieth against an Infant vpon a contract, & where not, 172. a *. vide tit. Infant.
11 Where by a release of all debts an Execution shall bee discharged, 76. a †. vide tit. Execution.

¶ Deedes.

1 A Deed what, & what things incident thereto, 35. b. ¶ 171. b ¶
2 The diuers kindes of deedes, 35. b ¶ 36. a † *
3 The seuerall parts of a deed, & the nature & office of each part, 6. a. * 229. a b ¶
4 Where a deed shall bee good, albeit the formall & orderly parts thereof be wanting, 7. a †
5 The difference betweene a Deed & a Charter, 9. a ¶
6 What shall be said a good deliuery of a deed, & what not, 36. a †. 49. b *
7 Where a deed shall receiue tryall per pais, and where by the Court, 35, b ¶
8 Diuers rules concerning the constructions of deedes. 36, a *
9 The antiquity of sealing Deeds and Charters, 7. a *
10 How the dates of deeds were anciently omitted. 6. a ¶
11 Where euery deed ought to bee in parchment or paper. 35. b ¶ 171. b ¶ 229. a *
12 Where a letter of Attorny may be contained within a deed of feoffment, & where not, vide tit. Livery of seisin.
13 What inheritances shall passe without deed, & what not, 121. b †
14 What Chattels shall passe without deed, and what not, vide tit. Chattels.
15 Where, & why a deed being pleaded ought to be shewed in Court, 35. b. ¶ 121. b † 225. a ¶ b †.
16 What manner of deed is pleadable in Court, and what not, 225. b *
17 Where a stranger to a deed may take benefit thereby without shewing the same in Court, and where not, 267. b ¶ 317. b ¶
18 Where & by what persons a condition may bee pleaded without shewing a deed in Court, & where, & by what persons not, 225. a ¶ b † ¶ 226. a † * 393. a †
19 Where the deed of Condition ought to be shewed, albeit the condition be executed, and where not, 226. a † 227. b * 228. b †
20 Where a deed remaining in one Court may be pleaded in another Court without shewing forth. 231. b. *
21 Where a deed shewed in Court shall be said to remain in the custody of the Court, & where in the custody of the party, 231. b ¶
22 A deed poll what, and whence so called, 229. a ¶
23 Where one person may take aduantage of a deed poll made to another, and how, 231. a. ¶ b † * 232. a b †.
24 The description of an Indenture, and by what names it was called anciently, & by what at this day, 229. a † 143. b *
25 Where a deed beginning Hæc Indentura, & without any actuall indenting, shall bee no Indenture, secus if the parchment or paper be indented, though there bee no such words, 143. b †. 229. a *.
26 The seuerall kindes of Indentures, and the formes of them, 229. b 230. a
27 Where vpon a gift in taile by Indenture, the part of the donée after his death without issue shall belonge to the donor, 229. a ¶
28 Where an Indenture shall be said the deed of the feoffer, albeit no mention bee made of putting his seale to the deed, & where not, 230. b † *
29 Where a man shall take and be bound by an Indenture, albeit he neuer sealed the deed, & where not, 230. b ¶. 231. a † *
30 Where an Indenture shall be an Estoppell, and where not, vide tit. Estoppell.
31 Where a reseruation of rent vpon egalty of partition shall be good without deed, vide tit. Partition,
32 Where assignment of dower shall be good without deed, & where not, vide tit. Dower.
33 Where an Exchange shall bee good without deed, and where not, vide tit. Exchange.
vide tit. Charter, Defeasance, Habendum, Inrolment, & Obligation.

¶ Default.

1 The legall acception of the word, 259. b *
2 The seuerall causes allowed by the law for saying a default, 259. b. ¶
3 ¶ Where sicknesse shall bee no cause to saue a default, ibidem.
4 ¶ Where a recouery by default against one out of the Realme in the Kings seruice shall not bee auoided by error, vide tit. Recouery.
5 ¶ Where vpon a recouery by default in a reall action against tenant for life, a Quod ei deforceat, lyeth, vide tit. Quod ei deforceat.
6 Where vpon a recouery by default a writ of disceit lieth, vide tit. Disceit.
7 Where iudgement finall shall be giuen in a writ of right vpon default of the tenant, 295. b †
vide tit. Non suit. & Retraxit.

¶ Defeasance.

1 The deriuation of the word, 236. b ¶
2 Where and what inheritances may bee Defeated by Indentures of defeasance, and where and what not 236. b ¶ 237. a †
3 Where an execution vpon a recognisance or statute may be auoided by a Defeasance, vide tit. Execution.
vide tit. Deedes.

¶ Deforcement.

1 The signification and deriuation of the word, 331 b. † *
2 The difference betweene a deforcement, disseisin, abatement, &c. vide tit. Abatement.

¶ Degrees.

1 Gradus vnde dicitur, 24. a *
2 How the degrées of consanguinity are computed in the Common, Canon, & Ciuill Lawes, 23. b. 24. a † vide tit. Franckmarriage.
3 The seueral sorts of degrées in a writ of Entry, 238, b ¶
4 ¶ What estate or change shall make a degree to haue a writ of Entry in the Per, and what not, 239. a † * 318. a †
5 Where albeit the Degrees be once past, the writ may be brought within the degrees againe, 239. a *
6 Where two estates shall make but one degree in a writ of Entry, ibidem.

¶ Demand.

1 The seuerall kinds of demands, 291. b†
2 The extent of the word, & what shall passe, or bee discharged by a release of all demands, vide tit. Releas.
3 At what place and time a demand of a rent to enter for a condition broken, or to haue an Assise ought to bee made, and at what not, 144. a†. 153. a ¶ b†. 201. b ¶. 202. a†*.
4 Where a distresse is granted upon not payment and demand, yet the grantee may distraine after the day of payment, without any demand, 144. a.† 202. a.*.

vide tit. Request.

¶ Demurrer.

1 DEmurrer what, and whence deriued. 71. b.*
2 The forme of a demurrer. 71. b.¶
3 The seuerall kindes of demurrers. 72. a.*
4 What things are admitted by a demurrer, and what not. 72 a.†
5 Where there is a demurrer for part, and issue for other part, which shall be first tried. 72. a† 125. b ¶
6 The course & the proceeding of the Iudges vpon a demurrer, 72. a†
7 Where the party shall alledge speciall matter, and conclude with a demurrer. 72. a*
8 Where a demurrer may be vpon Aide prier, receipt, voucher, wager of law, &c. 72. a*
9 Where the party shall be compelled to ioyne in demurrer, & where not, 72. a*

Dene, seu Denne, quid 4. b ¶ 5 b ¶.

¶ Denizen.

1 THe Etymology of the word, 192. a* 129. a.
2 The seuerall acceptions of the word, 129. a†*
3 The difference between naturalization, & denization by the Kings letters patents, 8. a† 129. a* ¶

vide tit. Alien & Ligeance.

¶ Departure.

1 FOr departure in despight of the Court, v. tit. Retraxit.
2 Departure in pleading, what, 304. a†
3 Where the Reioynder containing matter subsequent to the barre shall be a departure, & where not, 304. a†
4 Where the defendant plead performance of Couenants, and the Plaint. reply that he did not such an act, &c. to say that he offered to doe it, and the Plaint. refused shall be a departure, 304. a†
5 Where the party intituleth himselfe by the common law, to make it good by a custome or act of Parliament shall be a departure, 304. a*
6 Where the party pleads an estate generally, in his second plea to maintaine it by a matter tant amount in Law shall be a departure, 304. a*
7 Where the plaint. count of a gift, & maintaine in his replicatiõ by a recouery in value, this is no departure, ib.
8 Where in an action trãslatory the varying of the Plaint. in his replication from the time & place alleged in the Count shall be no departure, 282. a ¶ b*†. v tit. Action.

vide tit. Pleading.

¶ Deraignement.

1 THe signification and deriuation of the word, 136b.*
2 Where by deraignment of the ancestor the warranty discended vpon the heire shal be defeated, v. tit. Warranty.

¶ Detinue.

1 WHere, & for what things a writ of detinue lyeth, & where, & for what not, 286. b*
2 Where the defendant shall wage his law in a detinue, & where not, 286. b*
3 Where in a detinue of Charters, summons & seuerance lyeth, ibid.
4 Where a release of actions personals shall be a good plea in a detinue of Charters, 286. b*
5 Where a Capias lyeth in a detinue, & where not, ibid.

¶ Deuise.

1 THe signification of the word (deuise) 111. a†
2 Where deuises ought to haue construction according to the intent of the deuisor, & where not, 25. a* 322. b†
3 Where an inheritance shall passe by deuise without the word (heires) 9. b† 322. a ¶ b*
4 A deuise to a man and his heires males a good estate taile, 27. a ¶
5 Where by a deuise to a man & his heires males the son of his daughter shall not inherit, 25. a*
6 Where an estate may passe by deuise, that cannot by act executed in the life of the deuisor, 42. a*
7 Where the deuisee shall take the thing deuised without the assent of the Executors, and where not, 111. a ¶
8 Where vpon a deuise of lands the freehold shall bee said in the deuisee before entry, 111. a ¶
9 What remedy the deuisee hath vpon the intrusion of a stranger, and a discent cast before his entry, 111. a ¶.

vide tit. Entry Congeable.

10 Where the deuisee of a reuersion shall distrain, &c. without Attornment, vide tit. Attornment.
11 Deuise of lands by custome before the Statutes where good, & where not, 111. a b†
12 Where by a Custome to deuise lands, a deuise of a rent out of the same lands shall be good, 111. a*
13 Where deuises of lands, &c. since the statutes of 32. and 34. H. 8. shall be good, & where not, & where such deuises shall be good for the whole, & where but for part, 111. b. per tot. pag. vide stat. 32. H 8. cap. 1. & 34. H. 8. cap. 5.
14 Where the custome to deuise lands holden by Knights seruice, shall continue notwithstanding the making of those statutes, 111. b† 115. a ¶
15 Where a deuise by the husband to the wife shall bee good but not, è contra, 112. a b†
16 where a deuise of lands to be sold by executors shall bee good, & where such sale by them shall bee good, & where not, 112. b 113. a 236 a. per tot. pag.
17 What words shall amount to a condition in a deuise, that make no condition in a deed, vide tit. Condition.
18 where a feoffment being made to the vse of a last will, or of such persons as shall be named in the last will, the estate shall be said to passe by the will, & where by the feoffment, 271. b ¶, vide tit. Vses.

vide tit. Testament.

¶ Diuorce.

1 THe deriuation of the word, 235. a†
2 The seuerall kinds of diuorces, & which dissolue the mariage à vinculo matrimonii, & which not, ibid.
3 where notwithstanding a diuorce the wife shal be endowed, & where not, vide tit. Dower.

Vide tit. Bastardy & Mariage.

¶ Disabilitie.

1 THe seuerall disabilities in law in the person to bring any action, & who were anciently disabled, & who at this day, 128. a† 135. b*¶
2 where & in what actions alienné shall be a good plea in disability of the person of the Plaintife, and where, & in what not, vide tit. Alien.
3 where & in what actions Outlawry shall bee a good plea in disability of the person, & where, & in what not, vide tit. Outlawry.
4 where excõmunication shall disable the Plain. to bring

an action, & where not, vide tit. Excommunication.
Where profession in religion shall disable the Plaintife, & where not, vide tit. Profession.
vide tit. Capacity.

¶ Disceit.

1 WHere vpon a recouery by default in an action of waste a writ of disceit lieth, 355. b †. vide tit. Quod ei deforceat.
2 Where vpon a recouery by default had against a person in prison, a writ of disceit lieth not, 259. b *

¶ Discent, vide tit. Heire & Inheritance.

1 THe signification & deriuation of the word, 237. a ¶
2 Where & what Attainders shall hinder the discent of lands, &c. & where & what not, vide tit. Attainder & Corruption of bloud.
3 Where lands vested by discent shall bee deuested by the birth after of an heire more neare, vide tit. Heire.
4 Where the heire shall take by purchase & not by discent, vide ibid.
5 Where the heire shall haue an Appeale of the death of his Ancestor, where the party by whom he conuey his discent could not by possibility, vide tit. Appeale.
6 Where the heire shall be in by discent of an estate that by possibility could not be in his Ancester, 378. b †
7 Where Chattels shall discend, vide tit. Chattels.
8 Where & what discent shall take away the entry of him that right hath, & where, & what not, vide at Large in tit. Entry Congeable.

¶ Disclaimer.

1 THe Etymology & signification of the word, 102. a *
2 The seuerall kinds of disclaimers, ibid.
3 Where & what persons may disclaime in the Seigniory, & where & what not, 101. b 102. a *
4 What is wrought by such disclaimer in the Seigniory, 102. b *
5 Where vpon the disclaimer of the tenant in a reall action the demandant may enter before iudgement, 362. a ¶. 363. a ¶

¶ Discontinuance.

1 THe description of a discontinuance, 325. a *
2 The deriuation and seuerall acceptions of the word, 325. a * ¶
3 How many seuerall wales a discontinuance may bee wrought, and to the prejudice of how many seuerall persons, 325. a ¶ b †
4 What inheritances may be discontinued, and what not, 327. b *. 331. b ¶. 332. a b †. 335. b †
5 Where the deuesting or displacing the estate of another by alienation shall worke a discontinuance, & where not, 327. b *
6 Where the alienation of a Corporation was a discontinuance to the successors at the common Law, & where not. 325. b. 341. b ¶ 346. a & b. 347 a. vid. tit. Corporation how such discontinuances are prohibited at this day.
7 Where & what act by the husband was a discontinuance of the lands, &c. of his wife at the Common Law, & what shall be a discontinuance at this day, & where, & what not, 326. a. per tot. pag. vide Stat. 32. H. 8. cap. 28. et tit. Entry Congeable.
8 What act or conueiance by tenant in taile shall be a discontinuance of the estate taile, and what not, 326. b †. 327. a b †. 328. a. 334. b *
9 Where the discontinuance of the wife tenant in taile of the gift, &c. of the husband shall be void, vide stat. 1. H. 7. cap. 20. & what act by the wife shall bee said a discontinuance within that Stat. & what not, vide ibid.
10 Where the feoffment of the husband being iointly seised in speciall taile with his wife, shall bee a discontinuance to the issue after the death of the wife, 326. b *
11 Where the alienation of one tenant shall be no discontinuance to his companion suruiuing, 188. a † 327. b ¶.
12 Where a Partition betweene parceners shall worke no discontinuance, 173. a *
13 Where a warranty annexed to a release or confirmation shall worke a discontinuance, & where not, 328. b 329. a 339. a *
14 Where the release of an Abbot with warranty shall bee no discontinuance to his successor, 329. a *
15 Where the grant of a rent in fee with warranty by tenant in taile shall be no discontinuance to his issue, but at his election, 332. b †
16 Where tenant in taile of a rent disseise the ter-tenant, a feoffment by him with warranty shall bee no discontinuance of the rent, ibid.
17 Where a grant, release, or confirmation in fee to a lessee for yeares by tenant for life or in taile shall worke no discontinuance, 329 b, 330. a b †. 332. b ¶
18 Where the conueyance of an inheritance that lyeth in liuery, whereto no liuery is requisite, shall worke no discontinuance, 332. b †
19 Where a fine leuied by tenant in taile of a reuersion vpon a Lease for yeares shall be a discontinuance, secus of a reuersion vpon a Lease for his owne life, 323 b *
20 Where a Lease by tenant in taile for the life of the Lessee was a discontinuance at the Common Law during the particular estate, 333. a. †. *. 336. a. †. 338. b †. vide Stat. 32. H. 8. cap. 28 where such Lease shall bee good at this day, and where not
21 Where the freehold may be discontinued, and not the reuersion, 333. a ¶
22 Where a reuersion in fee vpon a Lease for life, or gift in taile being executed in the life of tenant in taile who made the estates shall be a discontinuance to his issue, & where not, 333. a. 334. a 335. b ¶.
23 Where a gift in taile by tenant in taile, & a release to the Donee in fee shall bee no discontinuance after the death of the Donee without issue, secus of a lease for life and such release. 333. b *
24 where tenant in taile make a gift in taile, a feoffment in fee by the Donee shall bee no discontinuance after his death without issue, 327. b ¶
25 where tenant in taile make a feoffement of a Manor with an Aduowson appendant, & dye, his issue may present before recontinuance, secus if the feoffee had presented in the life of tenant in taile, 333. b *
26 where a fine sur grant and render by tenant in taile not executed in his life shall bee no discontinuance to his issue, 333. b *
27 where a reuersion with warranty not executed in the life of tenant in taile shall bee no discontinuance, ibid.
28 where tenant in taile disseise his lessee for life & make a feoffment, & the lessee dye, this shall be no discontinuance, 333. b ¶
29 where a feoffment by tenant in taile to him in the reuersion or remainder shall bee a discontinuance, & where not, 335. a † ¶
30 where a feoffment by tenant in taile the reuersion or remainder in the King wall bee no discontinuance, 335. a *. vide Stat. 34. H. 8. cap. 20.
31 where a reuersion may be reuested, and yet the discontinuance remaine, 335. a ¶
32 where the estate which wrought the discontinuance is defeated by entry for condition broken, &c. the discontinuance it selfe is auoided, 336. b † *
33 where & by what meanes an estate taile may be discontinued by him that was neuer seised of the same estate, &

& where, and by what not, 338. b ¶ 339. a b 340. a 347 a ¶ b †
34 Where the escheat of a reuersion in the life of tenant in taile not executed in his Grantee, shall worke no discontinuance to the issue, 340. b.
35 Where the alienation of a Parson, Prebend. &c. shall be no discontinuance to the successor, 341. a † b*
36 Where a condition to enter vpon the alienation & death of tenant in taile without issue, shall preuent a discontinuance, vide tit. Condition.
vide tit. Entry Congeable.

¶ Disparagement in Marriage.

1 The Etymology of the word (Disparagement) 80. a*
2 The seuerall kindes of disparagements in marriage, & what shall be said a Disparagement, & what not, 80. a ¶ b † 82. a †
3 The penalty incurred by the Lord for such Disparagement, 80. b* ¶
4 Where a Disparagement by one Ioyntenant shall be a forfeiture of the wardship as to both, 80. b ¶
5 Vpon disparagement to the heire who shall enter & ouste the Gardein, and who not, 81. a †
6 Where the heire after Disparagement shall bee in ward againe, and where not, 80. b ¶
vide tit. Marriage and Warship.

¶ Disseisin.

1 The definition of a Disseisin, & the signification of the word, 153. b* 181. a †
2 How it differeth from an abatement, intrusion, &c. vide tit. Abatement.
3 What shall bee said a disseisin of a rent seche to haue an Assise, & what not, 153. a b* 161. b* ¶
4 What shall be said a disseisin of a rent seruice, & what not, 160. b 161. a b ¶
5 What shall bee said a disseisin of a rent charge, 161. b † ¶
6 Where a man shall haue seuerall Assises for one disseisin of one & the same rent, 153 b ¶
7 Where an Assise lieth against a Coadiutor, or Counsellour to a disseisin, notwithstanding the death of the tenant, 180. b ¶
8 Where the agreement of him in the reuersion to a disseisin of the tenant for life to his vse shall make him a disseisor in fee, 108. b ¶
9 Where a disseisin of the tenant in a Præcipe by the demandant to the vse of others shall not abate the writ, 180 b. ¶.
10 Where the entry of a man into lands of his own wrong shall be a disseisin, notwithstanding his claime to hold at the will of the tenant, 271. a †
11 Where a particular tenant holding ouer his estate shall bee reputed a disseisor, abator, &c. & where a tenant at sufferance, 271. a † * vide tit. Tenant at Sufferance.
12 Where he in the remainder for life disseise the particular tenant, by the death of the tenant the disseisin shall be purged, 276. a*
13 Where the confession of a disseisin shall be preiudiciall to the tenant in a reall action, & where not, 287. a*
14 Where the payment of rents, or seruices to a stranger by the tenant shall bee a disseisin to the Lord, & where not but at his election, 323. a & b. 324. a & b
15 Where & to what purposes a feme couert shall be said a disseisoresse without her proper act or entry, & where & to what not, vide tit. Couerture.
16 Where continuance in possession after the claime of him that right hath shall bee a disseisin, vide tit. Continuall Claime.
17 Where tenant for years, Gardein, tenant by Elegit, &c. by their feoffment shall be disseisors, 330 b* 367. a* b †
18 Where one Ioyntenant may disseise his companion, and what iudgment shall bee giuen vpon the recouery in an Assise, vide tit. Ioyntenants & Iudgement.
19 What acts by a disseisor shall bee good to binde the disseisee, & what not, 35. a* 357. b †
vide tit. Assise.

¶ Distresse.

1 The deriuation of the word, 96. a †
2 Of what things a distresse may be taken, & of what not. 47. a ¶ b †
3 How the distresse ought to be demeaned. 47 b †
4 What shall bee said a sufficient pound to impound a distresse, & what not, 47. b †
5 Where the owner may make rescuous of a distresse taken without cause, & where not, vide tit. Rescuous.
6 Where a distresse in the night shall bee good, and where not, 142. a*
7 Distresse inseparably incident to euery seruice, 150. b ¶ 151. b †
8 For what seruice incertaine the Lord may distraine, & for what not, 96. a †
9 Where a distresse lyeth for a rent seeke, 153. a †
10 Where the Lord may distraine the cattell of his tenant out of his fee, & where not, 161. a*
11 Where the Owner may make Rescuous of a distresse taken for damage feasant out of the land, in which, &c. ibidem.
12 Where a distresse lyeth by Executors for arrerages of rents, vide stat 32. H. 8. cap 37.
13 Where the Grantee of a Seignior, or reuersion shall distraine without attornement, & where not, vide tit. Attornment.

¶ Double Plea.

1 Where & why such plea not allowable in Law by one tenant or defendant, 303. a ¶ 304. a*
2 Where in pleas dilatory duplicity of matter may be vsed, secus in Pleas peremptory & perpetuall, 304. a*
3 By what means a man hauing diuers distinct matters in excuse or barre of an action may take aduantage of them all, 304. a ¶
vide tit. Pleading.

¶ Dower.

1 The definition, & deriuation of Dower, 30 b ¶
2 The diuers kinds of Dowers, 33. b* 39. b ¶
3 The description of Dower at the Common Law, 30 b ¶ 33 b*
4 What things requisite to the consummation of Dower, 31. a* 32. a ¶
5 The wife of what person shall haue Dower of the lands of her husband, & of what not, 30. b † 31. a*
6 The priuiledges incident to dower, 31. a*
7 Of what inheritances the wife shall haue Dower, & of what not, & in what manner they shall bee assigned vnto her, 30. b. † *. 32. a †. *. 37. b. ¶. 164. b*. 165. a † 307 a*
8 Of what Castle or Mansion house the wife shall bee endowed, & of what not, 30. b † 31. b* 165. a ¶
9 Of what seisin of her husband the wife shall be endowed, 31 a ¶ 226. b* 358. b †.
10 Where the wife shall not bee endowed of the seisin of her husband had by intrusion vpon the Kings possession, 30. b †
11 Dos de dote where it shall bee, and where not, 31. a ¶ b † 40. b ¶
12 Where the wife shall be endowed of an estate of her husband determined, 31. b*

13 Where the wife shall not bee endowed vpon a remitter or alteration of the estate to the heire. 31. b ¶

14 where the wife shall not bee endowed, albeit the issue by possibility may inherit, & è conuersò. 31. b ¶ 40 b †

15 where the wife being an Alien or Jew shall be endowed, & where not, 31. b ¶

16 where the wife shall haue dower of a thing suspended or extinct and where not, 32. a *

17 where the wife shall bee endowed according to the improuement, or decay of the value of her husbands estate after his death, & where not, 32. a * ¶

18 where the wife diuorced shall haue dower, & where not, 32. a ¶ 33. b †

19 where the wife shall lose her dower by Elopement, and where not, 32. a ¶

20 where the wife shall be endowed in seuerally by metes, and bounds, & where not, 32. b †

21 where a charge shall bee good against the wife made after her title to Dower, and where not, 32. b † 33. a * 173. a ¶

22 where the wife shall lose her Dower by the attainder of her husband, and where not, 31. a * 37. a. † 41. a * ¶. 392. b *

23 where the wife shall recouer damages in a writ of dower, & where not, 32. b ¶

24 what shall be said a good plea in dower to barre the wife of damages, 33. a †

25 To what purposes the dower of the wife shall bee said a continuance of the estate & possession of her husband, & to what not, 241. a † * 244. a ¶

26 Of what age the wife ought to bee to haue Dower, 33. a * ¶ 37. a *

27 what shall be said a good marriage as to dower, & what not, 33. a * ¶ b †

28 where the disability of the wife during couerture, being removed before the death of her husband shee shall bee endowed from the first seisin of her husband, & where not, 33. a ¶

29 where the wife shall haue Dower which cannot haue an Appeale of the death of her Husband, & è conuersò, 33. b †

30 Vpon what death of the husband the wife shal be endowed, & vpon what not, 33. b * 132. b †

31 where by custome the wife shall be endowed of the whole, & where of the moity, & where but of the fourth part of her husbands estate, & in what place such custome is pleadable, 33. b ¶ 110. b ¶ 111. a †

32 The description of dower ad ostium Ecclesiæ, 34 a †

33 where such dower shall bee good without deed, 34. a ¶

34 At what age the husband may endow his wife ad ostium Ecclesiæ, 34. a * 38. a *

35 Such endowment not good by tenant in tayle, 38 a †

36 Where the wife shall enter into her Dower after the death of her husband without assignment, & where not, 34. b † * 37. a ¶

37 What things are requisite to assignment of Dower, 34. b ¶ 35. a † *

38 By what person such assignment may be made, 34. b ¶ 35. a *

39 Where assignment of Dower by a disseisor, &c. shall be good against the Disseisee, and where not, 35. a * 357. b †

40 Where one tenant of the land shall take aduantage of an assignment of dower made by another tenant, and where not, 35. a †

41 Of what things assignement of Dower may bee made. 34. b ¶ 39. a *

42 Where an assignement of Dower shall worke a degree to haue a writ of entry in the Per, and where not, 239 a †

43 The description of Dower ex assensu patris, & of what tenements such endowment may be made, 35. a ¶

44 By what person such endowment shall bee good, and by what not, 35. b † * 37. a *

45 At what age a man may endow his wife, ex assensu patris 35. b * 38. a *

46 Dower ex assensu matris, fratris, &c. where good, and where not, 35. b †

47 Of what part of the land dower ex assensu patris, & ad ostium Ecclesiæ may be made, 34. b † 36. a ¶

48 Where the wife may disagree to dower ad ostium Ecclesiæ, or ex assensu patris, & where agreement to one dower shall barre her of another, & where not, 36. a ¶ b. † vide tit. Iointure.

49 What shall be said a sufficient act by the wife to determine her election to dower, & what not, 145. a ¶

50 The description of dower de la pluis beale, 38. a ¶

51 Where the wife shal retaine for part, & recouer against the Gardein in Chiualry for part, 39. a †

52 Where a writ of dower lyeth against the Gardein, and where against the heire, 38. b †

53 What shall bee a good plea by the Gardein in barre of dower, and what not, 39 a *

54 Where a writ of admeasurement of dower lyeth by the Gardein, & where by the heire, vide tit. Admeasurement.

55 What shall bee the surest mouilon for the wife for her dower, 34. b * 36. b ¶ 37. a †

56 Where a man by hauing issue shall be tenant by the Curtesie, where a woman shall not haue dower, vide tit. Curtesie of England.

57 Where tenant in dower shall be liable to waste after assignement of her estate, & where not, vide tit. Waste.

58 Where after assignment she ought to attorne to the grant of the reuersion, vide tit. Attornment.

59 Collaterall warranty no barre in a writ of dower, vide tit. Warranty.

60 Where a Protection may bee cast in a writ of dower, & where not, 131. a †

Dreuchs, quid. 5. b. *

Dunum, Duna siue Dun, quid. 4. b. ¶

¶ Droit, vide tit. Right.

¶ Dum fuit infra ætatem.

1 Where and by whom such writ lieth, 247. b ¶

2 Where baron & feme infants ioyne in a feoffmẽt by Indenture, the feme after the death of her husband may haue a Dum fuit infra ætatem, secus where her selfe was of full age at the time of the feoffment, 337. a *. vide tit. Entry Congeable.

3 Where an Infant tenant pur auter vy make a feoffment, and cestuy que vy die, a Dum fuit infra ætatem lieth not, 336. b. ¶

4 Where vpon a feoffment by two Ioyntenants within age, a Dum fuit infra ætatem lyeth by them seuerally. 337. a ¶

5 Where two Ioyntenants, one within age, and the other of full age, make a feoffment, the infant surviuing shall haue a Dum fuit infra, &c. but for a moity. 337. b † vide tit. Iointenant.

vide tit. Infant.

¶ Dum non Compos mentis.

1 The seuerall sorts of Non Compos mentis, 247. a †

2 By what meanes a feoffment or other estate made by a Non Compos mentis may be auoided during his life, & by what not, 247. a ¶ b †

3 Where a fine or recouery by a Non Compos mentis shal barre his heire, 247. a ¶

4 Where the entry of the heire of a Non Compos mentis shall

shal be Congeable, where the entry of the Ancestor was not. vide tit. Entry Congeable.

5 Where a Non Compos mentis may be a purchasor, 2. b ¶

6 By what person a writ of Non compos mentis lieth, & by what not, 247. b ¶

7 Where the act or wrong of a Non Compos mentis shal be imputed to him, and where not. 247. b †

8 Returnment by a non Compos &c. void. v. tit. Acturnmēt. Vide tit. Ideot.

¶ Eier.

1 The signification of the word, 293 a ¶

2 The authority & manner of proceeding of the Justicesin Eier anciently, 293. b †

¶ Election.

1 Where a man having several remedies for one thing, the election of one remedy shal conclude him as to the other, & where not, 146 a †

2 Where an election is given to several persons, the electiō of which of them shal stand, 245. a †

3 Where of two several things who shall have the election 145. a *

4 Where such election ought to be in the life of the parties, & where not, 145. a †

5 Where a man by his act & wrong shal lose his election, 145. a *

6 Where the privilege of election shal discend, or is transferable over, & where not 46. b † 166. b † * 186. b. ¶

7 What shal be said a sufficient act to determine the electiō of a Grantee of a rent charge to make it an annuity, or a rent, & what not vide tit. Annuity.

8 What act by the wife shall determine her election of dower, & what not, vide tit. Dower.

9 Where the Lord may elect to have the wardship of the heire of his tenant, or take himselfe to the services. 83. b ¶

10 Where the Lord shall have election to abow upon the Feoffor or Feoffee, & where not, vide tit. Avowry.

11 Where it shall be in the election of the tenant to vouch, &c. by reason of a warranty in deed, or in law, 384. 8. ¶ vide tit. Warranty.

¶ Elegit.

1 Wch writ whence so called, & where it lieth. 289. b †

2 What things the Sherife may deliver in execution upon such writ, & what not, 289. b † vide Stat. W. 2. cap. 18.
vide at large in tit. Execution.

¶ Elopement.

1 Elopement, what, 32. a ¶ b †

2 Where the wife shall lose her dower by Elopement, & where not. vide tit. Dower.

¶ Emblements.

1 Where a Lessée at will shal have the emblements after his estate determined, & where not. 55. a ¶ b *

2 Where tenant for life or his executors shal have the emblements after his estate ended, & where not, 55. b † *

3 Where the Lessée for yeares of a tenant for life shal have the corne after the death of his Lessor. 55. b †

4 Where the husband sowe the land of his wife, his executors shall have the corne. 55. b *

5 Where the husband ioynt tenant with his wife sowe the ground, the wife surviving shal have the corn, ibid.

6 Where land discend to a daughter who sowe the ground, the son born after shall not have the corn 55. b *

7 Where the estate of the tenant is defeated by a right paramount, forfeiture condition, &c. the Tenant shal not have the corne, 55. b *

8 Where the disseisee by his regresse shal have the emblements severed before his entry. ibid.

9 Where tenant by stat. merchant sowe the land, & after is satisfied by a casuall profit, he shal have the emblements, 55. a *

10 The remedy which the tenant hath to come by the corne after his estate ended, 56. a †

¶ Entry, and Entry Congeable.

1 The divers writs of Entry 239. a *

2 The severall writs of entry sur disseisin, & where each writ lyeth. 238. b * ¶

3 What shall make a degree to haue a writ of entry in the Per, & what not. vide tit. Degrees.

4 What remedy the disseisee had at the common law where the land was conveyed beyond the degrees, & what at this day, vide Stat. Marlebrige, cap. ultimo.

5 Where an entry generally into one acre shal be said an entry into others, & where an entry into part shall be an entry into the whole, & where not, 15. a ¶ b † 252. b ¶

6 Where the entry of one parcener shall bee accounted in law the entry of both & where not, 243. b. * 373. b. ¶. 374. a *

7 Where the entry of a stranger to the use of him that hath right or title of entry shal vest the estate in him before agreement & where not, 245. a ¶ 258 a †

8 What act upon the land by him that hath a right of entry shal amount to an entry, & what not, 49. b ¶ 245. b * 368 a *

9 Where an entry into one acre in the name of other acres in the same County shal be sufficient for both, & where not, 252. b per tot. pag.

10 Upon what conveyances the freehold shal be said in the purchasor before entry, & upon what not, vide tit. Freehold.

11 Where upon a condition broken a man shal be adiudged in possession maintenant without entry or claime vide tit. Conditions & Continuall Claime.

12 Where a tortious entry shal gaine an Inheritance by wrong which is in Abeiance. vide tit. Abeiance.

13 Why anciently a long possession, & why at this day a discent shal take away the entry of him that right hath, 237. b *

14 The discent of what inheritances shal toll an entry, & of what not, 237. b ¶

15 The discent of what estate shal toll an entry, & of what not. 239. a ¶

16 Where the dying seised of a seisin in law shal toll an entry. 239. b †

17 Where the dying seised of a reversion or remain. shal toll an entry, & where not, 239. b *

18 Where the disseisor make a Lease for his owne life and dyeth, this discent shal not toll the entry of the disseisee, 239. b *

19 Where a collaterall discent shal toll an entry, as well as a lineal 239. b ¶

20 Where a discent after a recovery & before execution shal take away the entry of the recoveror. & where not, 238. a †

21 Where a discent cast the disseisee being in prison shal not toll his entry, secus of a person recluse, or where the disseisin was before imprisoment 258. b * 259 a. per tot. pag.

22 Where a discent cast the disseisee being beyond sea shall not toll his entry, 260 a ¶ b † 261. a 262. b †

23 Where a discent cast in time of vacation of an Abbathy or other

other sole Corporation shal not toll the entry of the successor, 263.b 264.a †

24 Where a title of entry shal not bee tolled by a discent, 240.a * ¶ b † *

25 Where the entry of the disseisée shal bée congeable upon the Lord by escheat, & where not, 240.a †

26 Where upon the discent the heire is remitted to another estate then his Ancestor dyed seised of, the entry of the disseisée is congeable, 238.a ¶ b †

27 Where a disseisor make a gift in taile, and after diuers discents the issue in taile dye without issue, the entry of the disseisee shal be congeable upon him in the rever. or remain. 238.b † 240.a *

28 Where the entry of the disseisée shal bée congeable upon the disseisor notwithstanding diuers mean discents, or a purchase of the freehold from his father, upon whom the land discended, 238.b * 242.a † 248.a ¶

29 Where an Infant lessée for life of a disseisor is disseised & a discent cast the entry of the disseisée shal be congeable upon the Infant after his re-entry, 238.b *

30 Where the entry of a Patentée of the King, or a deuisée of lands shal be congeable notwithstanding a discent cast upon an intrusion, 111.a ¶ 240.b *

31 Where the entry of the disseisée shal be congeable upon the wife of the disseisor after endowment notwithstanding the discent, 240.b ¶ 241.a †

32 Where upon the abatement of the disseisée the wife of the disseisor recover in dower, the entry of the disseisée after shal not be congeable, secus if he had assigned her dower in pais, 241.a *

33 Where the entry of the disseisée upon tenant for life shal deuest the reuersion setled in the King. 241.a ¶

34 Where a discent mediate to the dying seised of the Ancestor shal not ouste the disseisee of his entry, 241.b † *

35 Where a discent cast upon the disseisin or abatement of the younger brother shal toll the entry of the eldest, & where not, 242.a * ¶ b 243.a †

36 Where a discent cast upon the abatement of one parcener shal toll the entry of her sister as to her moity, & where not, 243.a ¶ b † *

37 Where the entry of the mulier shal be congeable upon the issue of the bastard eigne after a discent & where not, vide tit. Bastardy.

38 Where a man dies seised, his wife enseint, a discent cast upon the abatement of a stranger shal toll the entry of the issue borne after, 245.b ¶

39 Where a discent shal take away the entry of an Infant that right hath, & where not, 245.b ¶ 246.a *

40 Where a discent cast during the Coverture shal toll the entry of the feme, & where not, 246.a * ¶ b † 353.b ¶

41 Where the entry of the heire of a NonCompos mentis shal be congeable notwithstanding a discent or alienation in the life of his ancestor, 247.a b * ¶

42 In what cases the entry of the heire shal be congeable, where the entry of his ancestor was not, 247.a †. b *

43 Where the entry of an Infant after his full age shall be congeable upon his alienée, 248.a *

44 Where an Infant disseisor enter upon the heire of his alienee, the entry of the disseisee shall be congeable upon the Infant. 248.a †

45 Where a discent by reason of profession in religion shal not toll the entry of the disseisee. 248.b

46 Where a discent shall not toll the entry of a lessee for yeares, tenant by Elegit, &c. 249.a †

47 Where a discent in time of warre shall not toll an entry 249.a ¶ b †

48 Where a dying seised & a succession shal not toll an entry, 250.a †

49 Where the husband within age discontinue the land of his wife, the entry of the feme after his death shall be congeable upon the discontinuée, 336.b ¶ 337.a †

50 Where an Infant tenant in generall taile in the right of his wife discontinue in taile & dye, the entry of his heire or feme shall be congeable upon the discontinuée, 337.a †

51 Where an Infant tenant in taile make a feoffment, & after is attainted & dye, the entry of his issue is not congeable upon the feoffée. 337.a *

52 Where two Infants ioyntenants make a feoffment the entry of the survivor shal be congeable into the whole, 337.a ¶ vide tit. Dum fuit infra ætatem, & Ioyntenants.

53 Where the baron discontinue the land of his feme for life by the surrender of the tenant the entry of the heire of the feme is congeable upon the baron in the life of tenant for life, 338.a † ¶ vide tit. Surrender.

54 Where baron & feme & a third person are ioyntenants, & the baron make a feoffment & dyes, the entry of the third person surviving shall be congeable into the whole, & where but to a moity, 327.b ¶ vide tit. Iointenants.

55 Where a disseisor make a Lease for life and leuie a fine of the reuersion, and fiue yeares passe, the entry of the disseisée is not congeable upon the tenant for life, 298.a †

56 Where upon Montenure pleaded or disclaimer in a formedon, the entry of the issue in taile shal be congeable upon the tenant be fore iudgement, 262.a ¶

57 Where two Ioyntenants, one within age, & the other of full age be disseised & a discent cast, & he of full age dye, the entry of the other shal be congeable into the whole, 364.b ¶

58 Where the entry of the disseisée shal be congeable upon the heire of the disseisor at this day, & where not, vide Stat. 32.H.8.cap.33.

Vide tit. Continuall Claime, & Discontinuance.

¶ Error.

1 WHere, & upon what iudgement such writ lieth, and where & upon what not, 168.a † 288.b †

2 Where a release of al actions shal be a good plea in a writ of Error, & where not, 288.b ¶ vide tit. Release.

3 Where after recovery in a reall action a release by the tenant of all his right in the land shal barre him of a writ of error, 289.a †

4 Where a recovery by default against a man out of the realme in the Kings service shal not be avoided by error, 260.b *

¶ Escheat.

1 THe Etymology and signification of the word, 13.a * ¶ 92.b †

2 How many wayes an Escheat may happen, 13.a ¶ 92.b *

3 The seueral writs of Escheat upon attainders, vide tit. Attainder.

4 Where an Escheat by reason of Attainder shal relate to the time of the Felony committed, & where not, vide tit. Relation.

5 Where upon the dissolution of a Corporation their lands shall revert to the donor, and shall not escheat, 13.b *

6 Where the acceptance of Homage or Fealty shall barre the Lord of his escheat, vide tit. Acceptance.

7 Where the acceptance of rent shall barre the Lord of his escheat, & where not. vide ibid.

8 Where the disseisor make a feoffment or dye seised, upon the death of the disseisée without heire, an escheat lieth not, 268.b †

9 Where the father dyeth his son being attainted of treason, the lands of the father shall escheat, & not goe to the King. 13.a ¶

10 where the entry of him that right hath shal be congeable upon the Lord by escheat, and where not, vide tit. Entry Congeable.
11 where the Lord by escheat, may rebut by reason of a warranty, vide tit. Rebutter & Warranty.
vide tit. Attainder, Corruption of bloud, & Heire.

¶ Escheator.

1 His office and duty, 13. b.†
2 why so called, ibid. 92. b †
3 The number of them in ancient & modern times, ibidem.

¶ Escuage.

1 The Etymology of the word. 68. b * ¶
2 The severall kindes of Escuage 72. b ¶
3 For what time such tenant is bound to attend upon the King in his warre, 68. b ¶ 69. b ¶
4 From what the time of attendance shal be computed, 70. a ¶ 71. a ¶
5 Where the tenant may performe his attendance by deputie, 70. a † b † 83. a †
6 Where attendance by tenant paravaile shal excuse al the mesnes, 69, b ¶ 78. b ¶
7 Where attendance by one Joyntenant shall excuse his companions, ibid.
8 What persons are exempted from personal performance of this service, 70. b ¶
9 Where escuage shal be assessed by Parliament, and for what cause, & when it was last assessed, 72. a ¶ b †
10 Where the tenant dying in the Army his heire shal be excused of Escuage, 72. b †
11 Where the tenant of the King by escuage shal have escuage of his own inferiour tenants for their not attendance in the war, & where not. 72. b † * 73. a ¶ b † ¶
12 Where and what escuage shall be Knights service, and what socage 72. b ¶ 87. a
13 Escuage generally, which shal be intended, 73. a †
14 What services incident to a tenure by Escuage. 73. a *
15 The remedy which Lords have to come by their escuage, 73. b †
16 Where action of debt lieth for escuage, and where not, vide tit. Debt.
17 How it shal be tried whether the tenant was with the King in his warre, or not, 74. a *
18 What shal be said a Voyage royall, wherein such tenant is bound to attend, 69. b * 130. b *

¶ Essoigne. vide tit. Protection.

¶ Estates.

1 The signification of the word, 345. a *
2 Status unde dicitur, 9. a *
3 Where a man shal have an estate of inheritance without the words (Heires or Successors) vide tit. Heire & Devise.
4 Where there may be two estates in fee simple of the same land at the same time, vide tit. Fee simple.
5 Where two shal have joynt estates of freehold, & severall inheritances, vide tit. joyntenants & Taile.
6 Where two severall estates of the same land may be simul & semel in the same person, and how and when they shal be said to be executed, 54. b ¶ 182. b 184. a * ¶ b † 338. b ¶
7 Where the estate of a man for his owne life, shal bee esteemed higher than for the life of another man, and where not, 41. b ¶ 42 a †
8 Where severall freeholds may be derived out of an estate for life, & where not 42. a †
9 Where a man shall have an estate for life determinable at will, 42. a ¶
10 Where an incertaine interest in lands shal be deemed in Law, an estate for life, & where but at will, 42 a *
11 Where tenant in taile grant totum statum, what shall passe by such grant, vide tit Grants.
12 Where tenant for life having a fee expecting upon a remainder in taile, grant totum statum, both estates shal passe, 345. a ¶
Vide tit. Fee simple, Freehold & Leases.

¶ Estoppell.

1 The signification & derivation of the word, 352. a †
2 The severall kindes of Estoppels, & by what matter or act an Estoppel may be wrought, & by what not. 352. a * ¶
3 Where Estoppels ought to be reciprocall to binde both parties, 352. a ¶
4 Where every Estoppell ought to be precisely affirmative and certaine to every point. 303. a * 352. b †
5 Where matter neither traverlable nor materiall, shall be no Estoppell, 352. b †
6 Where acceptance before title acrued shall worke no Estoppell, ibidem.
7 Where an Estoppel against an Estoppell shal put the matter at large, 352 b †
8 Where the adverse partie shal not bee Estopped to take advantage of a truth apparant in the Record, 352. b *
9 Where a man shal take advantage of an Estoppell without plea, vide tit. verdict.
10 Where the acceptance of an estate by the husband to him & his wife, shal Estop him to alleage a Remitter to the wife, 352. a
11 What persons shal bee bound & take advantage of estoppels, and what not, 352. a ¶ b †
12 Of what Estoppels that goe to the person, a stranger shal take benefit, & of what not, 128. b † 352 b *
13 Where an Estoppel of part of the mother shal not binde the heire claiming from his father, 365. b *
14 Where an Estoppell to the sonne descending mediately upon his father, shal binde him, & where not, 12. a †
15 where a Deed indented shal bee an estoppell, & where not, 45. a * 47. b ¶ 363. b ¶
16 where a man accept a Lease of his owne land by indenture, how long the estoppell shall be said to continue, 47. b. ¶
17 where in a Nuper obiit the Defendant claime by purchase, the Plaintife may have a Mordancester against her for the whole, 146. b †
18 A Conclusion, what, & whence derived, 37. a † 170. a ¶

¶ Estovers.

1 The derivation of the word, 41. b ¶
2 what estouers of common right belong to a tenant for life, yeares, &c. ibidem.

¶ Etymologies.

The use & benefit of etymologies, 68. b * 86. a † 87. a † 106. b † 109. a ¶ 137. a ¶ 177. a † &c.

¶ Evidence.

1 The derivation of the word, 283. a ¶
2 The extent of the word. & what matters shal be said good evidence to an enquest, ibidem.
3 where the speciall matter shal be pleaded, and where it ought to be given in evidence, vide tit. Pleading.
4 where a thing done beyond the seas may be given in evidence, 261. b *
vide tit. Triall & verdict.

¶ Exchange.

1 The description of an exchange, 50 a ¶
2 Of what things an exchange may be made, and of what not, 50. b * ¶

what

3 What things requisite to the perfection of an exchange, 51.b†
4 Where an exchange shall be good without Deed, and where not, 50.a ¶ b*
5 Where an exchange shal be good, altcit there be no transmutation of possession, 50. b ¶
6 What equalitie ought to be observed in exchanges, and what not, 51 a per tot. pag.
7 Where an exchange of lands with the King shal be good, 51.a*
8 Where an exchange by an Infant shal be good, & where voidable, 51. b*
9 How an exchange & a Partition differ, vide tit. Partition.

¶ Excommunication.

1 EXcommunicatio quid, & quotuplex, 133. b ¶
2 The conditiō of a person excommunicated, 133 b* ¶
3 What persons are disabled thereby to bring an action, & what not, 134. a†
4 Where an excommunication certified by a Bishop, shal not disable the Plaintife in an action against the same Bishop. ibidem.
5 By whom excommunications ought to be certified, and what certificate shal be good, & what not, 134 a*
6 Where an excommunication by the Pope, or other forraine authority, shal not disable the party, ibidem.

¶ Execution.

1 THe legall acception of the word, 154.a ¶
2 Divers Maximes in Law concerning executions, 289 b†
3 Where the Demandant may enter, or distraine after iudgement, & before execution. & where not, 34.b*
4 Where upon a iudgement in debt the Plaintife shall have execution of the lands which the Defendant had at the time of the writ brought, and where not, 102.a ¶
5 Where by discent of part of the lands in execution to the Conusee, the whole execution shall be avoided, 150.a†
6 Where tenant in taile recover in value, & die without issue before execution, execution shall be sued by him in the reversion, 252.a*
7 Where lands, &c. shall be in execution upon Statute Merchant, Staple, Recognizance, &c. vide Stat. Acton. Burnel, De mercatoribus. & 23. H 8. cap 6.
8 Where lands &c. in execution are evicted, what remedie the Recognisee, or Obligee hath at this, & where a Scire facias lieth to extend other lands, & where not, vide Stat. 32. H. 8. cap. 5.
9 Where after a perfect execution by extent returned and of record, there shal be no re-extent upon any eviction, 290.a ¶
10 Where no execution by Elegit, Statute Merchant, &c. shal be sued against the heire, or his mother endowed by the heire during his minoritie, 290. a ¶
11 Where a Capias ad satisfaciendum lay at the Common Law, & where at this day, 290. b†
12 Within what time writs of execution ought to be sued forth, & where, being commenced within the time, they may be continued after, 290. b* vid. Stat. W. 2. cap. 45.
13 Where to a writ of execution no plea can be admitted, but for matter since the iudgement, the partie is put to his Audita Querela, 290. b*
14 Where a release of all debts, duties, demands or executions shal discharge an execution, secus of a release of all actions, 76.a† 289.a* 291.a* ¶ b*
15 Where a release of all suits shall barre an execution, and where not, 291.a*
16 Where an execution upon a recognizance may be defeated by a Deed of defeasance, 291. a ¶.
17 Where a man may have execution upon a recognizance the first day, without staying till all the dayes incurred, 292. b. ¶ vide tit. Dobt. & Payment.

¶ Executors.

1 WHere a remainder for yeers limited to the executors of I.S. shal best presently in I.S. 54. b ¶
2 Where the executor shal have remedy for the arrerages of rent which the testator in his life could not, 146. b†
3 Where executors shall be bound by the Obligation of their Testator without naming 209. a ¶
4 In what respects the executor shal be said more to represent the person of the Testator, than the heire the person of the Ancestor. 209. a ¶ b ¶
5 Where an executor shal be reputed in Law an Assignee, & where not, 210 a*
6 Where an executor may release an action before probate of the Testament, 292. b†
7 Where an account lyeth by & against an executor or Administrator, & where not, vide tit. Account. 4
8 What shal be said Assets in the hands of an executor or Administrator, & what not, vide tit. Assets.
9 Where a man shal have an action of debt against his owne executors, 133. b*
10 Where the executors of a Bishop shal have a ward which fell in the life of the Bishop, secus of a presentation to a Church which voided in his life, 90. a* ¶ 388. a*
11 Where a Church voideth in the life of the Testator, the executors shal present & not the Guardeine in Chivalry, secus where the tenant of the King in capite die, &c. 388. a*
12 Where the Obligor make the Obligee his executor, albeit the action be gone, the executor may retaine, vide tit. Obligation.
13 Where an Infant make his debtor his executor, the debt is extinct. 264. b ¶.
14 Where a feme executrix take the debtor to husband, notwithstanding the debt remaine, ibidem.
Vide tit. Devise & Testament

¶ Exempla illustrant non restringunt legem, 24. a ¶

¶ Exposition of Words.

1 WHere the word (vt) shal be taken positively, & where by way of similitude, 17. b* 43. b.*
2 Where the word (Or) shal be taken in the Conjunctive, where in the Disjunctive. 99. b† 383. a ¶
3 Where the legall Termination (in agium) in composition signifie service or dutie, 86. a† 109. a*
4 The word (Prochain amy) how taken in Law, 88. a*
5 How many things the Adiective (Liber) distinguished in Law 94. a ¶
6 The exposition of the words (Dedi & Concessi) in Grants 56. b vide tit. Grants & Confirmation.
7 Of the word (Demisi) 301. b ¶
8 Of the word (volo) 301. b ¶
9 Of the word (Eadem) & how it shal have relation, 20. b †385. b*
10 Of the word (Predict) & the force of its relation, 20. b.†
11 Of the word (Hereditament) 6. a† 16. a* ¶. 383. a ¶ b†
12 Of the words (Proxima advocatio.) 378. b ¶ 379. a†
13 Of the words, (Sans impeachment de wast.) 220. a†
14 Of the words (Demesne land) 17. a ¶
15 Of the words (A confectione) 46. b ¶
16 Of the words (from henceforth) ibidem.

Of

17 Of the words (from the date, or from the day of the date) ibidem.
18 Of the words (medietas advocationis & Advocatio medietatis Ecclesiæ) vide tit. Advowson.

¶ Extent.

EExtents by Elegit, Statute Merchant, or Staple, &c. vid. Stat. W. 2. cap. 18. Stat. de Acton Burnel, & de Mercatoribus. 23. H. 8. cap. 6. 32. H. 8. cap. 5. & tit. Execution.

¶ Extinguishment.

1 THe signification and derivation of the word. 147. b*
2 Where by purchase of part of the Land out of which, &c. the whole rent charge shall be extinguished, 147. b ¶ vide tit. Apportionment.
3 where by discent of part of the tenancie to the Lord, an entire rent service shal be extinct, and where not, 149. a†
4 Where by purchase of part of the tenancy by the Lord, an entire rent service shal be extinct, & where not. 149. a* ¶ b†
5 Where by such purchase of the Lord an Harriot shall be extinct, & where not, vide tit. Harriot.
6 Where by the grant of the Lord of the services of his tenant by Castlegard, the Seignory shal be extinct, 83. a*
7 Where by purchase of the tenancie by the Lord Paramount the Mesnaltie shall be extinct, vide tit. Mesnaltie.
8 Where & to what purpose an estate drowned or extinct, shal be said to have continuance, & where, & to what not, 185. a* 338. b.†*
9 Where a grant of the services or rent to the tenant shall enure to him by way of extinguishment, 307. a ¶ b† 313. b* vide tit. Releas.
10 Where the remainder in fee of the tenancie escheat, the Seignior, as to the whole, shal be extinct, 312. b†
11 Where a Bishop is seised of a rent, and the ter-tenant infeoffe him and his successours, by the entry of the Lord for Mortmaine the rent is not revived, secus where tenant for life grant a rent in fee, and infeoffe the Grantee, upon whom the Lessor enter for a forfeiture, 338. b*
12 Where the accession of a freehold in auter droit shall extinguish a terme which a man hath in his own right, secus è converso. 338. b ¶
13 Where the releas of the Lord of all his right to the tenant and a Lessee for yeares of the Seignory, shall extinguish the Seignory and state of the Lessee also, secus, of a Releas to them and their heires, 180. a*
14 Where the Lord disseise his tenant, & is disseised, a releas by the Disseisee to the second Disseisor shal not revive the Seignorie, secus if the tenant had beene disseised by the Lord & a stranger, & had released to the stranger vide tit. Releases.
15 Where by purchase of parcel of the land, out of which &c. the whole common shal be extinct, & where not, vide tit. Common.
16 Where a Lease for yeares may cease and revive a-gaine as to severall persons, and where not, 46. a* ¶ b†
17 Where the re-entry of the Lessee upon the feoffee of his Lessor shall revive the rent reserved upon the lease, 319. a*
18 Where the Grantee of a rent disseise the ter-tenant, the regresse of the tenant shal not revive the rent, ibidem, Vide tit. Releases, & Suspension.

¶ Extortion.

1 THe derivation and severall acceptions of the word. 368. b*
2 What shal be said Extortion in Sheriffes, or other officers & what not, 368. b†* vide Stat. W. 1. cap. 26.
3 The odiousnesse of the crime, 368. b*

¶ Eye, quid. 5. b ¶

¶ Falsifying of Recoveries.

1 THe signification of the word (Falsifie) 104. b†
2 What persons might falsifie a recovery at the Common Law, & what not, 146. a†* 104. b† vide Stat. Glocest. cap. 11.
3 What persons may falsifie a recovery at this day, and what not, vide Stat. 21. H. 8. cap. 15.
4 Where & by what matter the issue in tayle may falsifie a recovery had against his Ancestor, & where & by what not, 360. b ¶ 361 a†*
5 Where he in the reversion or remainder shal falsifie a recovery had against tenant for life, vide tit. Forfeiture, & Stat. 14. Eliz. cap. 8.
6 Where a Recovery shall be falsified by cause of covine or collusion, & by whom, & where not, vide tit. Covine & Recovery.

¶ Fealtie.

1 THe Etymologie of the word, 67. b*
2 The manner of doing fealtie, 67. b* ¶
3 The difference betweene the fealty of a Freeholder, & of a Villeine. 68. a†
4 What person & tenant shall doe fealtie, & what not, 67. b ¶ 63. a* 68. a* 93. b†
5 How Fealtie differeth from Homage, 68. a per tot. pag.
6 The benefit which accrue to Lords by accepting fealtie, 68. a ¶ 92. b
7 Where tenant by fealtie shall sweare to doe all services due, when after fealtie done, no service is due. 92. a ¶
8 To what tenures fealtie is incident, & to what not, 23. a ¶ 93. a 95. b* 96. b ¶ 150. b ¶
9 Fealtie incident to attornment. 104 a†
10 Inseparably incident to every reversion, 143. a†
11 How the oath of Fealtie differeth from that of Allegeance, vide tit. Alleageance.
12 Where a seisin of Fealtie shall bee a seisin of all other services, vide tit. seisin.
13 Where the acceptance of Fealtie by the hands of the Disseisor shall barre the Lord of his Eleheat. vide tit. Acceptance.

¶ Fee Simple.

1 THe signification and derivation of the word (Fee) 1. b* 2. a*
2 The severall sorts of fee simples. 1. b* 9. a ¶
3 What words requisite to the palling of a fee simple, 8. b. ¶ vide tit. Heires.
4 How many severall wayes a fee simple may be purchased, 10. a*
5 The ampleneſſe of such estate, 18. a*
6 Where two fee simples may be of the same land at one time, & where not, 18. a ¶ 354. b*
7 Fee generally, what fee it shall be intended. 189 a*
8 A feoffement to one & the heires of his father a good fee simple, 220. b†*
9 Fee simple conditionall, & the course of its discent at the Common Law 19. a* ¶
10 By the having of what issue such condition said to be performed, & of what not, 19. a*

To

11 To what purposes the having of issue was a performance of the condition & to what not, ibid.
12 Where the sons only, & where the daughters only were inheritable to such estate. 19. a ¶
13 Where the alienation of the Donée after issue was a barr to his issue, or the Donor, & where not, 19. a ¶
14 A grant to a man & his heires tenants of the Mannor of D. a good fée simple. 27. a ¶
15 A grant by the King of a Barony to one & his heires Lords of the Mannor of K, a good fée simple qualified in the dignitie, ibidem.

¶ Fees.

1 Where notwithstanding the Grantor ouste his officer, his fée shall continue, & where not, 233. b † vide tit. Office.
2 Where in an action by an Attorney for his fées, the Defendant shall not wage his Law. 295. a ¶ vide tit. Wager of Law.
3 Where the receiving greater, or other fées than are prescribed by the Statutes, shall bee extortion, & where not, 368. b * vide tit. Extortion.

¶ Felony.

1 The signification & extent of the word, 391. a *
2 By a pardon of all felonies, what crimes anciently, & what at this day are pardoned, 391. a *
3 The severall sorts & degrées of felony, & what forfeiture is incurred by each of them. ibidem.
4 Where upon attainder of felony in an appeale, the Defendant shal forfeit no Lands, but those hee had at time of the outlawry pronounced, secus in an Indictment, 390. b * vide tit. Relation.
5 A pardon of all felonies, no pardon of Pyracie at this day. 391. a ¶
6 The punishment of a felon implied in his judgement to be hanged, 392. b †
7 Where a Felon may be a purchasor, and to whose use, 2. b *
Vide tit. Attainder.

¶ Feoffments.

1 The Etymologie and signification of the word, 9 a ¶
2 The antiquitie of a Feoffment ibid. 49. b *
3 The severall parts of a Feoffment, vide tit. Deeds.
4 What person may make a Feoffement, & what not, 42. b * ¶ 43. a †
5 By the delivery of the Deed of Feoffment, what estate passeth before livery of seisin. 56. b ¶
6 Where the Feoffement of a moity or third part of a mans land shall be good without Deed, 190. b *
7 A Feoffement of the moitie of a Manor to have with an Aduowson appendant not good without Deed. 190. b ¶
8 Where a leas & relras shal amount to a Feoffement, 207 a ¶ vide tit. Conditions.
9 Where a Feoffement shall extinguish a Condition or power of revocation, & where not, 237. a * vide tit. Conditions.
10 Where Cestui que use & his Feoffées after 1. R. 3. & before 27. H. 8. joyne in a Feoffement, whole Feoffement it shall be construed, 302. b †
11 Where tenant for life and he in the reversion or remainder in fee, tayle or for life joyne in a Feoffement, how it shall be construed, 302 b. vide tit. Confirmation & Surrender.
12 Where in pleading a Feoffement of a Manor livery and Attornement are implyed without being alleaged. vide tit. Pleadings.
Vide tit. Livery of seisin.

¶ Ferdwitt quid. 71. a †

¶ Ferlingus, seu Ferlingum terræ quid, & what shal passe by such grant, 5. b †

¶ Fines to the King.

1 The severall acceptions in Law of the word (Fine) 126. b *
2 Fine to the king, what. ibid. 127. a *
3 How such Fine differeth from an Amerciament, vide tit. Amerciament.
4 The difference betweene a Fine & a Ransome, & where they shall be said all one, 127. a *
5 How and when Fines for Alienation of lands grew first due to the king, vide tit. Alienation.
6 Fines of Copiholders. vide tit. Copihold.
Fines reasonable by whom triable, 56. b.

¶ Fines of Lands.

1 The description of a Fine, & whence so called, 120. b ¶ 121. a † 262. a ¶
2 What time was allowed by the Common Law to make claime after a Fine levied, and what at this day, 262. a † 254. b ¶
3 What persons were barred by a Fine at the Common Law that could not make claime, and what persons might make claime, and yet were not barred by such Fine. 262. b † *
4 Where a Fine levied by tenant in taile shal be a barre to his issue, or them in the reversion or remainder, & where not, 372. a ¶ b † vide Stat. 4. H. 7. cap. 24
5 Where a grant and render by Fine to a stranger to the writt and Conusance shall be good to passe a voidable estate to him in præsenti, 353. a ¶ vide tit. Remitter.
6 What shall be said a good Claime within the five yeares to avoid the estate of the Conusee by fine, & what not, vide tit. Continuall Claime.
7 Where a Disseisor make a Lease for life, & levie a fine of the reversion, & five yeares passe, the estate for life is unavoidable, vide tit. Entre Congeable.
8 Where a Feme covert shall be concluded by a fine, and where not, 353. b † * vide tit. Remitter.
9 Where fines worke wrong to third persons ought not to be accepted. 383. a † *
10 Where an Infant shall be bound by a fine, & where such fine may be avoided by him during his nonage, and where after his full age, vide tit. Infant.
11 Where a fine levied by a Non Compos mentis shall be a barre to him and to his Heires. vide tit. Dum non compos, &c.

¶ Firma whence derived, and how called in severall Counties, and what shall passe in a Grant by that name, 5. a *

¶ Folkland quid 58. a †

¶ Forcible Entrie.

1 Force, what & how taken in Law 161. b ¶
2 Upon what Statute the writ of forcible entrie is grounded, & where it lieth. 257. b †
3 Where divers persons goe to make a forcible entrie, the violence used by one shall make them all guiltie of force ibid.
4 Where the Master commeth with a greater number of servants than usually attend him, his Entrie shall be deemed forcible, 257. b †
5 What number of persons may commit a force, 257. a ¶
6 Where an act shall be said in Law to be done, vi & armis, or forcibly, 162. a †

Where

7 Where & what dammages & costs are recoverable in a writ of Forcible entrie, Vide tit. Dammages.

¶ Forrest, Parke, Chase, and Warren.

1 The description of a Forest, 233. a ¶
2 The signification & derivation of the word Parke, 233. a †
3 What beasts properly belong to the Forrest, what to the Chase & Parke, & what beasts and fowles to the warren, 233. a *
4 The difference betweene a Chase & a Forrest, ibid.
5 What act by a Keeper of a Parke shal be a forfeiture of his office, 233. b *
6 What shal be said waste in a Parke, Vide tit. Waste.

¶ Forfeiture.

1 The signification & derivation of the word, 59. a *
2 How many several wayes a particular Tenant may forfeit his estate by alienation, & what act by him shal be said a forfeiture of his estate, & what not, 251. a ¶ b per tot. pag. 252. a †
3 Where the right of a particular estate may be forfeited, & he that hath but a right shal take advantage of it, 251. b † 252. a †
4 Where by the forfeiture of a Lessée for life, all meane charges & estates by him made shal be avoided by the Lessor, & where not, 233. b ¶ 234. a † vide tit. Conditions.
5 Where Lessée for life forfeit his estate by alienation, the forfeiture shal continue notwithstanding the determination of the estate by limitation, or entrie for condition broken 202. b * 252. a *
6 Where Tenant for life & he in the remainder for life having the fée expectant upon a remainder in taile joyne in a Feoffement, this shal be a forfeiture of both their estates to him in the remainder in taile, 302. b ¶
7 Where Tenant for life make a Lease for his owne life to his Lessor, the remainder in fée to his Lessor and a stranger, this shal enure as a forfeiture for one moitie, & surrender for the other, vide tit. Surrender.
8 Where recoverie suffered by Tenant for life should be a forfeiture of his estate at the common Law, & at this day, & where not, 356. a ¶ 362. a † * vide Stat. 14. Eliz. cap. 8.
9 Where a Statute giveth a forfeiture generally against him that wrongeth the dutie or interest of another, who shal have this forfeiture, 159. a *
10 A gardianship in Socage or by nature, not forfeitable by Outlawrie or Attainder, 84. b * 88. b ¶
11 What lands, &c. forfeitable by an Attainder in a Præmunire, & what not, vide tit. Præmunire.
12 What is forfeited by conviction of Felonie before Attainder, vide tit. Attainder.
13 Where a forfeiture shal relate to the time of the Felonie committed & where not. vide tit. Relation.
14 What shal be a forfeiture of a Copy-hold Tenancie, vide tit. Copy-hold.
15 What shal be a forfeiture of a Freehold Tenancie, 92. b ¶
16 Forfeiture of Offices, vide tit. Office,
17 Forfeiture of Estates, vide tit. Conditions.
18 Where a man hanged by Marshall Law shal not forfeit his Land, 13. a ¶.

¶ Foriudger.

1 The legall acception of the word, 100. b *
2 Where and for what cause the Tenant shal forjudge his mesne, and where, and for what not, 100. a ¶ b †
3 The forme of the Judgement in a Forjudger, 100. a ¶
4 What persons shal be bound by a Forjudger, & what not, 100. a ¶ b †
5 Where in a writ of Mesne by two Joyntenants one is summoned and severed, the other shal not forjudge the Mesne 100. a ¶
6 Where in a writ of Mesne against two joynt Mesnes one make default, the Tenant shal not forjudge the other, 100. a ¶
Vide stat. W. 2. cap. 9, & tit. Mesne.

¶ Formedon.

1 Formedon, whence so called, 326. b *
2 The severall kindes of Formedons, & where & by who each Formedon lieth. 326. b ¶
3 Where a Formedon lieth of a Copy-hold, 60. a ¶ vide tit. Copy-hold.
4 What shal be said a good plea in barre of a Formedon, & what not vide tit. Assets, Fines, & Warrantie.
5 Where the Discontinuee of Tenant in Taile make a Lease for life, and grant the reversion to the Issue in Taile the Issue is for ever barred of his Formedon 297, b *
Vide tit. Tayle.

¶ Frankalmoigne.

1 The description of a tenure by Frankalmoigne, 93. b * 94. b †
2 How such Tenure was created at the first, & how it may be created at this day, 93. b ¶ 99. a *
3 Where a gift in Frée almoigne shal be good without dèed, & where not. 94. b *
4 Where the reservation of a Rent upon such gift shall be void, 97. a †
5 What services such Tenant is bound to doe, & what not, 95. a ¶ b †
6 What remedie the Lord hath for such services, 95. b ¶ 96. a
7 Where the Tenure in Frée almoigne shal continue, notwithstanding the alteration of Divine Services, and Prayers, 95. b *
8 Where such Tenure cannot be of Lands in ancient Demesne, 97. a †
9 Where such Tenant shal not be charged with a Corodie, ibidem.
10 Upon transferring the Seignioze or Tenancie in Frankalmoigne, what service shal be due to the Lord or grantée, 98. a 99. b † *
11 Of what services the Lord is bound to acquite his Tenant in Frankalmoigne, & of what not, 99. b ¶ 100. a *
12 Where such Lord shal not disclaime in a writ of Mesne, 102. a * 306. b †
13 Where a Confirmation by the Lord to his Tenant by Fealtie, &c. to hold in Frankalmoigne shall be good, Vide tit. Confirmation.

¶ Frankbanke quid, 110. b ¶

¶ Frankmariage.

1 The signification of the word, 21. b *
2 What things incident to an Estate in Frankmariage 21. b † * 219 b *
3 The differences betweene a Donée in Frankmariage & in speciall taile, 21. b ¶ 22. a †
4 What service due by such Donée to his Donor, 23. a ¶ 97. b
5 Where a Rent may be given in Frankmariage, 21. b *
6 The necessitie of the word (Frankmariage) to the creation of the estate, 21. b ¶

7 How the degrees in Frankmarriage shall be computed, 23. b per tot. pag. vide tit. Degrees.
8 Where a gift in Frankmariage to the parties alreadie married shal be good, 176. a *
9 Where a Remainder limited upon such gift shal impeach the estate in Frankmariage, & where not, 21. b *
10 A devise of lands in Frankmariage void, ibidem.
11 A gift in Liberum Maritagium by Cestuy que use before 27. H.8. no Frankmariage, ibid.
12 Where a Rent reserved upon a gift in Frankmariage shal not take effect till the fourth degree past. ibidem.

¶ Frassetum quid, 4. b *

¶ Freehold.

1 The signification of the word, & whence so called, 43. b *
2 Where divers Freeholds may be derived out of one, and where not, 42. a †
3 Where an incertaine interest in Lands shall bee deemed in Law a Freehold, and where not, 42. a * vide tit. Estates.
4 Where a man may have a Freehold in his owne right, & a Chattel in anothers right simul & semel: but not è converso, 54. b ¶ 338. b ¶
5 Where the alteration of the Freehold shal be an alteration of the reversion, 191. b 192. a b Vide tit. Ioyntenants.
6 Where a right of Freehold shal drowne in a Chattell, 266. a †
7 The description of a Freehold in Law, 266. b †
8 Upon what conveyances the Purchaser shal be said to have a Freehold in Law in him before Entrie, & upon what not, 266. b † *
9 Where a stranger by the acknowledgement of the Tenant in a Præcipe to be his villein shal be actually seised of the Freehold and inheritance without Entrie, 266. b *
10 What actions are maintenable by and against him that hath only a Freehold in Law, and what not, 358. a ¶ b †
11 Where a Freehold in lands may be defeated by a condition without Entrie or Claime, & where not, 379. a † vide tit. Conditions.
12 Where the Freehold in lands shall be in Abeiance, vide tit. Abeiance.
13 To what purposes Tenants by Statute Merchant, Elegit, &c. are said to have a Freehold, & to what not, 43. b *
Vide tit. Estates.

¶ Frustrum terræ quid 5. b †

¶ Frythe quid, 5. b ¶

¶ Gardeine.

1 The several sorts of Gardeines, 85. a †
2 Who shal be Gardeine of Inheritances, which lie not in Tenure during the minoritie of the Heire, 87. b * ¶
3 To what purposes the gardeine shal be said possessed of his ward before entrie or seisure, & to what not, 38. a ¶ b †
4 Where a writ of Dower lieth by the wife against the gardeine, & where against the heire within age, vide tit. Dower.
5 Where the gardeine shal have an Admeasurement of Dower against the wife, and where not, vide tit. Admeasurement.
6 Where an action of waste lieth against the Gardeine, & the penaltie in such Action, vide tit. Waste.
7 Gardeine in Socage, vide tit. Socage.
vide at large in tit. Mariage & Wardship.

¶ Gavilkinde.

1 Gavilkinde whence so called, & where such custome used, 140. a ¶ 175. b * ¶
2 Where one brother dying without issue, al the brothers shal equally inherit by this custome, aswell as sons, 140. a ¶
3 Where by such custome the wife shal have dower of the moitie of her husbands lands, 111. a †
4 Where by the same custome the husband shal be Tenant by the Curtesie without issue, ibidem. vide tit. Curtesie of, &c.
5 A prescription in this Custome not good, 175. b *

¶ Glyn quid, 5. b ¶

¶ Grange quid, & what shal passe by that name in a Grant, 5. a ¶

¶ Grand Serieantie, vide tit. Serieantie,

¶ Grants.

1 The description of a Grant, 172. a †
2 What things properly lye in Grant, & what in Liberie, 9. b † 48. a † 85 a 332. a * 335. b *
3 What things are grantable over, and what not, 89. a † 214. a ¶ 231. b † 266. a † vide tit. Annuitie & Assignment.
4 Where a thing in suspence may be granted over, and where not, 314. a *
5 Where grants shal receive construction according to the substance of the Deed, & not according to grammaticall sense, 146. b *
6 Where the construction of grants ought to ensue the intention of the parties, 313. a ¶ b † vide tit. Intention of, &c.
7 Where the words of a grant shal be transposed in construction contrarie to their order, 217. b †
8 Where a grant being impossible to take effect according to the letter, the Law shal make such construction, as by possibilitie may take effect, 183. b † vide tit. Possibilitie.
9 Where a Grant shal amount to a Release, Confirmation, Surrender, &c. and where not, 301. b * 302. a † 307. a ¶ 313. a ¶ b † vide tit. Confirmation.
10 Where the same words shal amount both to a grant & confirmation of the same thing, vide tit. Confirmation.
11 Where by the grant of a Manor without (cum pertinentiis) a Villeine regardant, Advowson appendant, &c. shal passe, 307. a †
12 What shal passe by the grant of the services of Tenant in taile, & what not, 150. b † 152. a *
13 Where a grant of a Corodie to two men & their heires shal amount in Law to several grants, 189. a *
14 Where two tenants in Common joyne in the grant of a Rent charge, it shal enure as several grants, 197. a † 267. b * vide tit. Rents.
15 What grant shal be sufficient to charge the Land with a Rent, & what not, vide tit. Rents.
16 Where by the grant of a reversion, rents & services shal passe, 151. b ¶ 152. a † 317. a * 324. a ¶ b ¶
17 By the grant of (Hæreditaments) what shal passe, 6. a † 16. a * ¶ 383. a ¶ b †
18 Where by the grant of Land a reversion shall passe, 324 b ¶
19 Where Tenant in taile grant totum statum, what shall passe, 331. a * ¶ vide tit. Estates.

A man

20 A man grant proxima advocat. to one, & before the Church void grant proximam advocat. to another, the second grant void, 378 b ¶

21 A man gram 3. præsentationem & die, his wife shal have the 3. & the Grantee the 4. 379. a †

22 Where the Grantee named after the Habend' shal take by the Grant, & where not, vide tit. Habendum.

23 Where the grant of Patron & Ordinarie shal charge the Church, vide tit. Annuitie, & Parson.

24 What things may be granted without Deed, & what not, vide tit. Deeds.

25 Where a Grant, &c. shal be good, albeit the Grantor or Grantee be misnamed, vide tit. Name.

26 Where a Grant shal be good albeit no mention is made of the proper name of the Grantor or Grantee, vide ibidem.

27 Where the Grant of a thing in abeiance shal be good, and where not, vide tit. Abeiance.

¶ Grava quid, 4. b ¶

¶ Gurges quid, & what shal passe in a Grant by that name, 5 b †

¶ Haga quid, 5. b * 56. b †

¶ Habendum.

1 The office & force of the Habend' in a Deed, 183. a ¶

2 Where it shal be said repugnant in the grant of an estate taile, & where not, 21 a †

3 Where one named after the Habend' shal take by the gift, & where not 7. a † 21. a ¶ 26. b ¶ 378. b †

4 Where the several limitations in the Habend' shal destroy the ioynt implication of the premisses, 183. b † 190. b †

5 Where an Habendum may inlarge the premisses, but cannot abridge them, 299. a †

Vide tit. Deeds.

¶ Hariot.

1 How called in the Saxon tongue, 185. b ¶

2 From what antiquitie due to Lords, ibidem.

3 Where a devise by the Tenant of all his goods shal not defeat the Lord of his hariot, 185. b ¶

4 Where by purchase of part of the Tenancie by the Lord, a hariot shal be extinct, & where not, 149. b † * vide tit. Extinguishment.

5 Where a hariot shal be paid before a Mortuarie, 185. b ¶

¶ Haugh & Hough quid, 5. b ¶

¶ Heire.

1 The Etymologie & legal acception of the word (Heire) 7. b ¶ 237. b †

2 What issue & person may be an heire, & what not, 7. b ¶ 8. a † ¶

3 Hæres apparens quis, 8. a ¶

4 Hæres altrarius quis 8. b †

5 Where & what Chattels the heire shal have after the death of his Ancestor, & what not, 8. a ¶ 18 b * 185. b ¶ vide tit. Chattels.

6 Where the word (Heires) shal be necessarie to the creation of an estate of inheritance, & where not, 8. b ¶ 9. b 10. a † 20. a ¶ 21. b † 22. a * 47. a * 193. b † 322. b * 385. b *

7 Where the word (Heires) shall be good of it selfe, and where not without coniunction of the word (ses.) 8. b *

8 The extent & latitude of the word (Heires,) 9. a

9 Heires a good name of purchase, 26. b ¶

10 Who shal be said the next heire to take by purchase, and who to take by Discent, 10. b *

11 Where the heire to take by purchase ought to be a compiete right heire in iudgment of Law, 24. b ¶ 26. b ¶ 164. a †

12 Where the Ancestor may make his right heire a purchaser, & where not, 22. b ¶

13 Where a Remainder is limited to the right heires of a particular Tenant, the Fee simple shal be said to rest in him presently, and where not, 22. b * 319. b † * 376. b ¶

14 Where the heire conveying by Discent ought to make himselfe heire to him which was last seised, 11. b * 15. a † 239. b †

15 Where by the birth of an heire more nére the Discent to another shal be defeated, 11. b ¶

16 Where the heire of the part of the father shall inherit before the heire of part of the mother, & à converso. 12. a & b 13. a † *

17 The difference betweene an heire in the Civill Law, & an heire at the Common Law. 237. b †

18 Where the sons of an Alien borne within the ligeance of the king shal not be heires either to other. The same of the sons of a person attainted, scus if borne before the Attainder, 8. a *

19 Where & what Attainder shall disable the partie attainted to inherit, or to have heire, and where and what not, 8. a * vide tit. Attainder, & Corruption of bloud.

20 Where the heire shall not be bound by the Obligation or warrantie of his Ancestor without naming, 209 a ¶ 383 b * 384. b * 386. a †

21 Where the heire shal not bee charged in an annuitie without naming, vide tit. Annuitie.

22 Where a man binde his heires to warrantie, or to pay a summe of money without naming himselfe, such lien shal be void, 386. a † vide tit. Warrantie.

23 Where a reservation of Rent to the heires of the partie without naming himselfe shal be good, & where not, vide tit. Reservation.

24 Where an action of debt shal lie against the special heire without naming the heire at the Common Law, secus of a Voucher by reason of a warrantie, 376. b * 386. b * vide tit. Voucher.

25 A gift to a man his heires & Successors, how it shall enure 9. a †

26 Where the heire shal be in by Discent of an estate that by possibilitie could not be in his Ancestor, vide tit. Discent.

27 Where the heire shal enter & have an action of Waste upon a Disseisin or waste done in the life of his Ancestor, which the Ancestor himselfe could not. vide Entrie Congeable. & Waste.

28 Where the heire shal have an Appeale of the death of his Ancestor, where the partie by whom he conbey his Discent could not by possibilitie, vide tit. Appeale.

29 Where a person attainted hath issue, and after pardon hath issue, the youngest no heire, living the eldest or his issues, vide tit. Attainder.

30 Where the heire shall have an action for defacing the Monument of his Ancestor. 18. b *

¶ Heireloome quid, 18. b. * A devise of heireloomes void, 185. b ¶

¶ Herbage.

1 What shal passe by the grant of the herbage of land, 4. b †

2 Where the owners acceptance of a Lease of the Herbage of his Land by Indenture shall be no Estoppell as to the Land, 47. b *

The Table.

3 Where a reservation of Rent out of the Herbage of land shall be good, 142. a *

4 Where a grant of the Herbage or vesture of the Land by one Joyntenant, shal binde his companion surviving, vide tit. Joyntenants.

¶ Heresie.

1 Attainder of Heresie no corruption of bloud, or forfeiture of lands, 391. a ¶ vide tit. Attainder.

¶ Hida terrę quid. 69. a *

¶ Hirst & Hurst quid, 4. b ¶

¶ Holm & Hulmus quid, 5. a *

¶ Holt quid, 4. b ¶

¶ Homage.

1 The Etymologie of the word. 64 b *

2 The division of Homage, 65. b †

3 The manner of doing Homage, 64. a ¶

4 In what respects it is said to be the most honourable & humble service, 65. a †

5 The League betweene such Lord and Tenant, 65. a * 100. b ¶

6 Where in doing Homage, Homage due to the King ought to be excepted, & the penaltie for omitting it, 64. b † 65. a ¶ b †

7 What person may doe & take Homage, & what not, 65. b * 66. b ¶ 67 a & b 68. a * 341. b †

8 The forme of Homage by an Abbot, or other Ecclesiasticall person, 65. b ¶

9 The forme of Homage by a woman sole. 66. a †

10 The forme of Homage by husband and wife joyntly, 66. a * ¶

11 Where and what Corporation may doe and take Homage, and where and what not, 65. b ¶ 66. b ¶ 67. a † 341. b †

12 Where the husband shal doe & take Homage alone, and where, joyntly with his wife, 30. a * 67. a † *

13 Where there are divers Tenants of the same Land, whereall, and where but one shall doe Homage, 67. a ¶ b †

14 Where and why the tenant shal not be sworne in doing Homage, 68. a †

15 Where homage done to one joynt Lord shall excuse against the other, 67 b *

16 The benefit which accrues to Lords by receiving homage, 68 a ¶ 92. b

17 Where the tenant notwithstanding homage once done to the Lord, shal be compelled to doe homage againe to his heire, & where not, 103. b * ¶

18 Where the tenant upon translation of the seignory to another shal be compelled to doe homage againe, and where not, 104. a & b

19 Where after refusal the Lord shal not distraine his Tenant for homage until request, 105 a

20 By what meanes fealty may bee separated from homage, and by what not. 150. b. ¶. 151. a. ¶. vide tit. Fealty.

21 The writ of Homagio capiendo, and where it lyeth, 101. a *

¶ Homage Auncestrell.

1 The description of Tenure by Homage Auncestrell, 100, b *

2 What on the Lords side not alwaies requisite to such Tenure, 100. b ¶ 102. b *

3 Where such tenure draweth to it warranty, & acquital, 101. a † * 384. a ¶

4 What shal be a good counterplea to a warranty by cause of homage auncestrell, 101, a *

5 What lands the tenant shal recover in value upon such warranty, 102. a * vide tit. Recovery in value, & Warranty.

6 The reciprocaltye of reverence & protection betweene such Lord & tenant, 100. b ¶

7 Where such Tenant shal be compelled to attorne to the grantee of his Lord, and where not, 101. a * vide tit. Attornment, & Per quæ servitia.

8 Where the Lord by homage Auncestrell may disclaime in the seignory, and where not, 101. b 102. a *

9 Where a man may hold by homage Auncestrell of a body politike, but not è converso, 102. b ¶

10 Where such tenure shal remaine not withstanding the alteration of the name & nature of the corporation, and where not, 102. b ¶

11 Where an Abbot, Bishop, &c. shal not disclaime in a seignory by hom. Auncest. 102. b * 103. a †

12 After alienation by the tenant by hom Auncest. what service shall be due to the Lord, 103. a *

13 What act by the tenant shal bee an interruption of the privitie betweene him & his Lord, & what not, 103. a * ¶ 202. b †

14 Where such Tenure may belong to Knights service, 105. a ¶

¶ Hope quid, 5. b ¶

¶ Horngeld quid, 107. a †

¶ Hors de son fee.

Where such plea shal be good by the tenant upon a distresse, & avowry by a stranger who claimes the seignory, & where not, 1 b ¶

¶ Hospitall.

1 The divers kinds of Hospitals, 342. a *

2 What hospitalls were given to the Crowne by the stat. of 27. H. 8. 31. H. 8. 37. H. 8. and 1. E. 6. and what not, 342. a *

¶ Howe and Hoo quid, 5. b ¶

Jampna quid, 5. a †

¶ Ideot.

1 Who properly said to be an Ideot, 247. a †

2 Where an Ideot shal be bound by a descent, 247. a † vide tit. Entry Congeable.

3 By what meanes a feoffment, &c. by an Ideot may bee avoyded during his life, & by what not, 247. a ¶ b †

4 Where a stranger may tender money in performance of a condition to save the estate of an Ideot without his consent, 206. b ¶ vide tit. Condition & Morgage.

5 Where an Ideot ought to sue in proper person & not by Gardian or Atturney, 135. b ¶ Vide tit. Dum non compos mentis.

¶ Imprisonment.

1 Imprisonment a good cause to avoid a descent, vide tit Entry Congeable.

2 A good cause to reverse an Outlawry, 259. b †

3 Where it shal save a default, 259. b *

4 Where & how a man in prison may bee proceeded against by suits & proces of Law, 260. a *

5 How a man in prison ought to bee ordered and used, 260. a *

6 A president where after judgement in an Appeale against a woman, her imprisonment was respited by reason of pregnancy, 289. a ¶

7 A president where after judgement in a trespasse quare vi, &c.

vi, &c. against an infant, he was excused of imprison-
ment by reason of his age, ibidem.

¶ Incident vide tit. Appendant.

¶ Incumbent, vide tit. Parson, & Quare impedit.

The Etymologie of the word, 119. b ¶

¶ Inditement.

1 The signification & derivation of the word, 126. b *
2 What certainty requisite in an Inditement, 303. a * vide tit. Pleadings.
3 where the inditement shall say (felonicè) albeit the offence be no felony, 127 a *
4 where upon attainder in an inditement the forfeiture shal relate to the felony commitred, secus in an Appeale, vide tit. Felony.
5 The difference between an appeale & an inditemẽt, 126. b* Vide tit. Appeale.

¶ Infant.

1 Where an infant may be a purchaser, 2. b ¶
2 where he may endow his wife, & where not, vide tit. Dower.
3 where assignment of dower by the heire being an Infant shall be good & where not, 35. a * vide tit. Dower.
4 where an exchange by an infant shal be good, & where voydable, vide tit. Exchange.
5 where by custome at fifteen he may make a lease, 45. b †
6 where and for what things the deed or obligation of an infant shall bind him, & where & for what not. 171. b ¶ 172. a *
7 where and within what time a fine levied by an Infant may be avoyded, and where it may bee reversed by his heire after his death, and where not, 131. a * 380. b *
8 where the breach of a condition in Law shal be a forfeiture of the office, or estate of an infant and where not, 233. b ¶
9 where laches in an infant shal bee prejudiciall to him, & where not, 246. a † b † * 380. b ¶
10 where a feme covert shall bee prejudiced by laches, where an infant shal not, 146. b * vide stat. Merton cap. 5.
11 where & at what age the act or wrong of an infant in criminal matters shal be imputed to him, & where and at what not. 247. b †
12 where a Lease for yeares made by an infant shall bee good, 308. a *
13 where the release of a debt by an infant shal bee good, & where not, 264. b ¶
14 what things are avoydable by an infant after his full age, & what onely during his nonage, 380. a * b *
15 where an action of waste or Cessavit lyeth against an Infant, 380. b. ¶. 381. a †
16 where an infant shal be compelled to attorne in a Quid juris clamat, or Per quæ servitia, 315 a ¶
17 where a descent shal toll the entry of an Infant & where not, vide tit. Entry Congeable.
18 where an infant shal be bound by a warranty descending during his infancy, & where not, Vid. tit. Warranty.
19 where the dying seised of a bastard without interruption shal barre the mulier being an Infant, vide tit. Bastardy.
20 where an usurpation upon an infant shal put him out of possession of the advowson, 344. b †
21 By what acts an infant in ventre sa mere shal be bound, & by what not, 100. b † 244. a * 245. b ¶
22 An Infant not capable of the stewardship of a Court. 3. b *
23 Not capable to performe grand serieanty at the Coronation, 107. b ¶
24 Not capable to be of an enquest, 157. a ¶ 172 b †
25 where an Infant shall not bee amerced for a nonsuit or default, 127. a †
26 where upon a judgement against him quod capiatur he shal not be imprisoned, 289. a ¶
27 where an execution by Elegit, Stat: merchant, &c. shal not be sued against the heire during his Infancy, vide tit. Execution.
28 where an Infant shal not be charged in an accompt, 171. b ¶ vide tit. Accompt.
29 where an Infant may doe Homage, but not Fealtie, 65. b*
30 where an Infant ought to sue by Prochein amy, & defend by Gardian, 135 b ¶
31 where a stranger, and where the speciall heire shal take advantage of the infancy of his Ancestor, 336. b ¶ 337. b † *
Vide tit, Coverture.

¶ Infranchisement, vide tit. Manumission.

The derivation and severall acceptions of the word, 137. b †

¶ Inheritance.

1 The extent and signification of the word, and what shal passe by the grant of inheritances, 6. a † 16. a * ¶ 383. a ¶ b †
2 The severall sorts of inheritances, 1. b ¶ 9. a ¶ 49. a † 164. b *
3 where a man may have an Inheritance moveable in lands, & how such inheritance may be aliened & charged, 4. a * 48. b † vide tit. Charge.
4 where an inheritance shal ascend, & where not, 11. a *
5 New inheritances reiected in Law, 13. a † 27. a ¶ 377. b ¶ 379 b †
6 The ancient course of inheritances not alterable but by Parliament, 27. a ¶
7 where an estate of inheritance shal passe without the word (Heires) & where not, vide tit. Heires.
8 where a man shal inherite where he by whom he conveieth cannot by possibility, & à converso, 25. a* ¶
9 The blood onely of the first purchasor inheritable to lands, 12. a *
Vide tit, Heires, & Feesimple.

¶ Inrollments.

1 Where Inrolments ought alwaies to be in parchment, 35. b ¶
2 where an Inrolment shal not bee pleadable without shewing the original Deed, 225, b *
Vide tit, Deeds.

¶ Instant.

1 The definition of an Instant, 185. b †
2 where the Law alloweth priority of time in an instant, 185. b †*
3 where a fee shal be devested & best in one person in an Instant, 297 b ¶
4 where a remainder besting in an instant shall bee good, vide tit, Remainder.
5 Whire a mans estate shalbe changed in an instant 202. b.

¶ Intention of the parties.

1 Where the construction of acts shall ensue the intention of the parties, and where not, 214. b † vide tit. Grants.
2 where the intention of the parties shal operate in the raising & direction of uses, 49. a †
3 where the entry of him that right hath into Land shall be guided by his intent. 49. b ¶

4 Where a man hath two waies to passe lands, and he intendeth to passe them by one of the waies, yet it shall passe by the other, & where not. 49. a †

¶ Interest.

1 The extent and signification of the word, 345. b ¶
2 What passeth by the grant of totum interesse, ibidem.
Vide tit. Estates.

¶ Intrusion.

What properly said to be an intrusion, & how it differeth from atatement, disseisin, &c. 277. a ¶ b †

¶ Ioyntenants.

1 Ioyntenants, whence so called, & how they differ from Parceners, 180. b †
2 What things may stand in ioynture one with the other & what not, 188. a per tot. pag. 192. b ¶
3 Where the parties shall be ioyntenants notwithstanding the severall and different limitations to each of them, 180. b †
4 Where there may be a Joyntenancy albeit no survivorship, 181. a ¶ b †
5 Where Chattels or debts in ioyntenancy shall survive, & where not, 181. b ¶. 182. a † *
6 Where Joyntenants may bee albeit the estates vest in them at severall times, & where not, 188 a ¶
7 Where two may have ioynt estates for their lives, and severall inheritances, or the inheritance to one of them, 182. a ¶ b 183. a 184 a † * 189. b *
8 To what purposes such inheritance shal be said to bee executed in the life of the parties, & to what not, 182. b * 183. a * 184. a * ¶ b †
9 Where & by what acts an estate in ioynture may be severed, & where & by what not, 182. a per tot. pag. 183. a † 190 a ¶
10 Where two may be ioyntenants of the freehold & fee-simple, & tenants in common of an estate taile in the same land, 183. b ¶
11 Where the ioyntenant surviving shall bee lyable to the charges of his Companion, and where not, 184. b per tot. pag. 185. a † *
12 Where the charges of one ioyntenant, avoidable by his companion, shal be good against himselfe surviving, 184. b *
13 Where upon a recovery against one ioyntenant execution shal be sued against his companion, 185. a †
14 Where an estoppell to one ioyntenant shall not bind his companion surviving, ibidem.
15 Where a devise by one ioyntenant shal bee void against his companion 185. a ¶ b †
16 Where by the death of the wife ioyntenãt with a stranger for yeares, the terme shall survive to the other ioyntenant & not to the husband, 185. b *
17 Where a disparagement of the heire by one ioyntenant shall be forfeiture of the ward as to both, 80. b ¶
18 Where one ioyntenant of a ward shall bee liable to the waste done by his companion, 54. a †
19 Where an assignment of dower by one ioyntenant shall be good against his companion, 35. a †
20 Where upon grant of a rent to two, the election of one to have it as an annuity or a rent shal bind his compañ 146. a † vide tit, Election.
21 Where a Rescuous by one Joyntenant shall make his companion a disseisor, 161. b †
22 Where one Joyntenant shal have an account against his companion, & where not, vide tit. Accompt.
23 Where each Joyntenant shall be said to be seised per my & per tout, & to what purposes either hath right but to a moyty, 186. a † * 350. a ¶
24 Where a lease for yeares by one Joyntenant for life or in fee to begin after his death shal be good against the survivor, & where not. 184. b ¶ 185. b † 186. a ¶ b †
25 Where a grant of the Herbage or vesture of the land by one ioyntenant shal binde the survivor, 186. b †
26 Where a presentation to a Church by one Joyntenant shall not put his companion out of possession, 186. b * vide tit. Presentation.
27 Where partition betweene ioyntenants shall be good without deed, & where not, 169. a * 187. a † * vide stat, 32, H. 8. cap. 32.
28 Whether in an Assise by one ioyntenant against his companion iudgement ought to be given in severalty vide tit. Iudgement.
29 Where by partition betweene Joyntenants a warranty shall be destroyed, & where not, 187. a *
30 Where husband & wife shall bee ioyntenants & where by entieties and where by moities, 187. a ¶ b per tot. pag. vide tit. ſ. 065.
31 Where baron & feme & a stranger are Joyntenants the sole alienation of the baron shall barre the stranger surviving as to a moyty, & where not, 187. b ¶ 188. a † 327. b ¶
32 Where one Joyntenant or Parcener enter or recover the whole estate being put to a right, the other shall enter and occupy with him, & where not. 188, a ¶ 364. b † *
33 Where a Lease of part of the terme by one Joyntenant for yeares shall bee a severance of the ioynture as to the whole, 192 a * 199 a †
34 Where a severance of the Joynture of the freehold shall be a severance of the reversion, 191. b 192. a b
35 Where a rent reserved to one Joyntenant shall enure to both, vide tit. Reservation.
36 Where a surrender to one Joyntenant shall enure to both vide tit. Surrender.
37 Where a reservation of the reversion to one ioyntenant by deed indented upon a lease by both shall not estopp the other, 192. a ¶
38 Where a Lease is made by two ioyntenants the remainder in fee to one of them, this shall be a good remainder for a moyty, 192. b †
39 Where one ioyntenant make a lease for his owne life and dieth, no survivor, quære, 193. a *
40 Where a release by one Joyntenant to his companion shall be good, & where not, & how such release shall enure, vide tit. Releases.
41 Where a release by a stranger to one ioyntenant shall enure to his companion, and where not, vide tit. Releases.
42 Where one Joyntenant shall have an action of waste against his companion, & where not, vide tit. Wast. & stat. W. 2. cap. 23.
43 Where the feoffment of one ioyntenant to his companion and a stranger shall be good onely to the stranger, 335. a *
44 Where two Infants ioyntenants make a feoffment, by the death of one his right shall survive, secus of a feoffement by one solely, 337. a ¶ b †. vide tit. Entry Congeable, & Dum fuit infra, &c.
45 Where a remitter to Joyntenant shall bee a remitter to his companion, and where not, vide tit. Remitter.
46 Where an Attornment to one Joyntenant shall be good to his companion, vide tit. Attornment.
47 Where two Joyntenants the one within age and the other of full age bee disseised and a descent cast, and he of ful age dye, the entry of the other ioyntenant shall be congeable into the whole, vide tit. Entry Congeable.
48 Where the father Joyntenant with his sonne and a stranger

stranger make a feoffement of the whole with warranty, the stranger surviuing shall auoid the whole, 367.a †, vide tit. Warranty.
49 Where two are iointly bound in an obligation & one dye, the charge shall surviue to the other, secus of a warranty, vide tit. Charge.

¶ Ioynture.

1 WHat shall be a good Ioynture within the statute of 27.H.8. & what not, 36.b.†*
2 Where the wife may waiue her Ioynture & where not, 36.b¶
Vide at large in tit. Dower. vide Stat. 11 H.7.cap.20.
3 Of discontinuance of Ioyntures, and the exposition of the seuerall parts of that statute.

¶ Ireland.

HOw & when the Lawes of England were first established in Ireland, and how afterwards confirmed & by whom, 141.a¶b†*

¶ Issue.

1 AN Issue, and the seuerall kindes of Issues, 126.a†
2 Where an Issue generally taken shall referre to the Count, & not to the writ, 126.a*
3 Issue vpon a negatiue pregnant not good, 126.a*
4 Where two affirmatiues shall make an issue, & where not, 126.a*
5 Where an issue shall be good vpon a matter affirmatiue & negatiue albeit it be not in expresse words, ibid.
6 The forme of the entries of issues of the part of the plaint. and on part of the def. ibid.
7 What pleas are issues themselues whereto the plaint: or def: cannot reply, 126.a*
8 Where (modo & forma) shall bee of the substance of the issue and where but matter of forme, 281.b. per tot. pag.
9 Where the substance of the issue being found, the verdict shall be sufficient notwithstanding omission of circumstances, 227.a¶.282.a†*
10 Where the plea of the party amount to a generall issue, the generall issue shall be entred, 303.b*
vide tit. Pleadings & verdict.

¶ Iudgement.

1 THe signification and deriuation of the word, 39.a¶ 168.a†
2 The seuerall sorts of iudgemnets, ibidem.
3 Where in a reall action by one ioyntenant or Parcener against another, iudgement shall not be giuen in seueralty, 167.b*187.a*
4 The seuerall iudgements in a writ of Partition & vpon which of them a writ of Error lieth, vide tit. Error, & Partition.
5 In what actions iudgement finall shall bee giuen, 294.b.†.
6 The forme of the iudgement, when it is for the tenant or def. in plea in bar or to the writ, 363.a†
7 How & by what meanes euery case iudicially depending shall receiue end, 71.b¶72.a†

¶ Iugum terræ quid, 5, a¶.

¶ Iuncaria & Ioncaria quid, & what shall passe by that name, 5.a†

¶ Iuris vtrum, vide tit. Parson.

¶ Iuror.

1 THe properties of a Iuror, 155.a¶b†
2 What person may be a Iuror, and what not, 156.b¶.157.a¶172.b†
3 What crime shall disable a man to be Iuror, and what not, vid.tit.Challenge, Stat.W.2.cap.38.Artic.sup.Chart.cap.9.
4 Vpon what trialls a Iuror ought to haue lands, &c. to the value of 40.s. vide Stat. 2. H.5. cap.3.
5 Where a Cestuy que vse shall be a sufficient Iuror within that Stat. 272.b†
6 Where tenant pur aut: vy, or the husband seised in his wiues right be returned on a Iury after the death of the wife or Cestuy que vy, they may be challenged, ib.
7 Where a witnesse shall bee had in equall respect with a Iuror, and where not, 6.a†*
vide at large in tit. Challenge & verdict.

¶ Iustices.

1 BY what names anciently called, 168.b*
2 Iustices of Assise whence so called, 263.a*
3 Their office & iurisdiction, ibid.
4 In what cases anciently Iustices of Nisi prius might giue iudgement, & in what not, 263.a*
5 The names of diuers Bishops and Clergy men that were anciently Iustices of the Kings Courts, 304.b†.
6 Iustices in Eire, and their authority, vide tit. Eire.

¶ King.

1 THe Etymology of the word (King) & how called in other languages, 65.b†
2 The stile of euery King of England since the Conquest, 7.a&b
3 The seuerall compellations of diuers Kings of England 7.a*
4 The seuerall Counsels of the King, 110.a*
vide at large in tit. Prærogatiue.

¶ Knight

1 THe deriuation of the word, and how called in other languages, 74.b*¶
2 The dignity of a Knight, 107.b*
3 What shall be said a Knights fee or Census militaris, 69.a†*, 83.b†

¶ Knights seruice.

1 THe description of Knights seruice, 74.b†
2 By what names such seruice is distinguished in law, 74.b¶75.a†*.b†.108 a†
3 To what end this seruice was created, 75.b†¶
4 The respect which the law hath to the supportation of this seruice, 39.a¶b¶
5 The priuiledges of tenants by Knights seruice, 75 a.*
6 At what age the tenant shall be intended able to performe this seruice, 74.b*75.b†78.b†
7 What things incident to this tenure, & from what antiquity, 76.a†b†.305.b¶
8 For what cause the law gaue the ward & marriage of the heire of such tenant to his Lord, 75.b†*.76.a*
9 Where the tenure ceasing the wardship & all other incidents shall also cease, 76.a†b*¶248.a¶.
10 Where the fruits of Knights seruice being suspended the tenancy being in a corporation, shall be reuiued againe in the hands of a naturall person, 70.b*99.a†
11 Where a tenure may bee Knights seruice & no escuage, 82.b¶
12 Where tenure by Castlegard shall be Knights seruice, & where not, 82.b¶.83.a¶.87.a¶.
13 Where the tenure shall remaine albeit the Castle be ruined, 83.a*
vide tit. Mariage, & Wardship.

¶ Knol quid, 5 b¶

¶ Laches.

1 The signification of the word, 246. b †. 380. b ¶
2 Where Laches shall be accounted in infants & femes couert & where not, vide tit. Couerture & Infant.
3 No Laches imputed to the King, vide tit. Prerogatiue.
4 Where the Laches of the husband shall bee preiudiciall to his wife, & where not, vide tit. Baron & Feme.
5 What persons shall be bound by Laches of claime after a fine leuied at the Common Law and at this day, & what not, vide tit. Fines.
6 Where Laches shall bee imputed to a man beyond sea, & where not, 260. b *. vide tit. Entry Congeable.
7 Where Laches shall be adiudged in a Non compos mentis, and where not, vide tit. Dum non compos, &c. & Ideot.

¶ Lagaman quid, 58. a ¶

¶ Lannemangi qui, 5. a.*

¶ Laps, vide tit. Quare impedit.

¶ Law.

1 The seuerall Lawes vsed within this Kingdome, 11. b † *
2 The diuision of the Law of England, 110. b †, 115. b *. 344. a *
3 The seuerall names whereby the Common Law of England is called, 142. a ¶
4 How the Common Law and the Law of the Crowne differ, 15. b * ¶
5 The Law spirituall what, 344. a ¶
6 Intendement of Law what, 78. b †
7 No proofe to bee admitted against the presumption of Law, 373. a ¶ b †
8 What things the Law most fauoreth, 124. b ¶
9 How the Law respects the order of nature, 92, a. †. 197. b †
10 The ancient rules and course of the Law not to bee innouated, 282. b *.
11 The commendation of the Law of England, 97. b ¶
12 The delight & facility of the study of the Law 71. a ¶
13 Admonitions and directions concerning the study and practise of the Law, 70. a ¶ b †, 249. b ¶

¶ Lea & ley quid, 4. b ¶

¶ Leases.

1 The deriuation of the word (Lease) 43. b ¶
2 The seuerall kindes of Leases, 45. a ¶ b †
3 What shall be sufficient words of lease, 45. b * 301. b ¶
4 What persons may make Leases at this day which could not by the Common Law, & è conuersò, 44. b *,
5 What things requisite to the perfection of a lease within the stat. 32. H. 8. 44. a ¶ b † *. vide stat. 32. H. 8 cap. 28.
6 What leases shall bee good within the statutes of 1. & 13. Eliz. & what not, 44. b ¶. 45 a *
7 Where a concurrent Lease shall bee good within those statutes, and where not, 45. a †
8 What shall bee said a sufficient certainty wherevpon a lease for yeares may depend, & what not. 45. b ¶
9 Where a lease for yeares may cease & reuiue againe, as to seuerall persons, & where not, 46. a * ¶
10 To what purposes the party shall bee said a lessée for yeares before entry & to what not, 46. b †. 51. b ¶. 270. a * b †
11 Where a lease is made to haue from the date, or day of the date, or from the making, or from henceforth, &c. where it shall be said to haue beginning, 46. b ¶
12 Where the deed hath no date or beareth an impossible date, when the lease shall bee said to haue commencement. ibid.
13 Where the deed referreth to a void Lease or misrecite a Lease in esse to haue from the ending of that Lease, when it shall begin, 46 b. ¶
14 The signification of the word (terme) & the difference inter terminum annorum, & tempus annorum, 45. b *
15 Where a lease to the party generally, shall be construed to be for the life of the lessor, & where for the life of the lessée, 42. a ¶. 183. a ¶ b †
16 Where diuers persons ioyne in a Lease, whose lease it shall be construed, 45. a * ¶. vide tit. Confirmation.
17 Where a Lease for yeares by tenant in taile shall be void by his death without issue, 45. b †
18 Where a Lease by a Parson Vicar, &c. before the stat. was void by his death & where but voidable, 45. b *

¶ Lectures.

The qualities of Lectures anciently, & how they differ from our Readings at this day, 280. a ¶ b † *

¶ Leswes & Lesues, quid, 4. b ¶

¶ Librata terræ quid, & what shall passe by that name 5. b. ¶.

¶ Licence, vide tit. Authority.

¶ Ligeance.

1 The definition of Ligeance, 129. a *
2 The diuision & seuerall sorts of Ligeance 129. a ¶ vide tit. Alien & Denizen.

¶ Limitation.

1 What shall bee said good words of Limitation in grants, &c. & the seuerall sorts of them, 234. b ¶ 235. a †
2 The time of Limitation in actions anciently, & at this day, vide tit. Time.

¶ Liuery out of the hands of the King.

1 Where the heire of the Tenant of the King shall sue liuery, & where an Ouster le maine, 77. a *
2 Where the King shall haue the meane profits vntill liuery or Ouster le maine sued by the heire, & where not, ibidem.
3 The seuerall kinds of Liuery, & which shall be the best & most safe for the heire, 77. a ¶
4 Where by the Liuery of a manor an Aduowson appendant shall passe from the King, without speciall mention, 77. a ¶
vide tit. Primer Seisin.

¶ Liuery and Seisin.

1 The description of Liuerie of Seisin, 48. a †
2 The seuerall kindes of Liuerie, ibid.
3 The antiquitie of Liuerie, 49. b *
4 To the passing of what estates Liuerie requisite, and of what not, 48. a † 216. a
5 What act or words by the Lessor or feoffor shall be said a good Liuery in deed, and what not, 48. a * ¶ 49. b *. 56. b ¶. 57. a †
6 Where a liuery expressing one estate referreth to a charter expressing another, or which is void, how it shall be construed, 48. a ¶ b †. 222. b ¶
7 Where a liuerie referreth to two seuerall Charters of different limitations, how it shall be construed, 21. a *
8 Where liuery of the one parcell shall bee a Liuery of the other, and where to one feoffée good to the other, and where

where not, 48.a ¶ 50.a † 253.a † 259.a ¶
9 How liuery shall bee made to passe a mouable inheritance, 48.b †
10 Liuery in law or within the view what, 48.b *
11 Where such liuery shall be good, and where not, ibidem 253.a ¶
12 Such Liuery by an Atturney void, 52.b *
13 Such Liuery not good but to him which takes the freehold, 49.b *
14 Where a claime shall amount to an Entry to perfect a Liuery within view, and where not, 48.b *
15 Where Liuery shall bee made of an vpper Chamber, ibidem.
16 What things properly lie in grant and what in liuery, 49.a †. vide tit. Grants.
17 Where a freehold in lands shall passe at the common law without Liuery, & where not, 49.a * 50.a ¶ b †
18 Where a Liuerie made another being in possession shall be good, and where not, 48.b ¶. 369.b *
19 In what respects a conueyance by liuery said to exceed all others, 49.a *
20 Where a Charter of feoffment by a disseisee, & a letter of Atturney to enter and make Liuery shall be a good feoffment after liuerie made, secus of a lease for years by deed, & an entry after, 48.b ¶
21 Where liuerie shall be made to a lessee for years, 49.a ¶.
21 Where Liuerie to one feoffee in the name of the other shall be good to both, & where not, 49 b † 359.a ¶
22 Where liuery to one Joyntenant lessee for yeares shall bee sufficient to passe the freehold to him in the remainder, 49.b †
23 What person may bee an Atturney to deliuer seisin, 52.a † *
24 Where & when the authoritie of an Atturney shall be said to be pursued, & where & when not, 52.a * ¶. 258 a ¶. vide tit. Authority.
25 Where the making of liuery shall preiudice the title or interest of the Atturney as to the land, & where not, 52.a ¶.
26 Where a letter of Atturney may be conteined in a deed of feoffment, & where not, 52.b *
27 Where liuery made after the death of the feoffor shall bee good, & where not, 52.a † b * ¶
28 Liuery not good to expect in futuro, 217.a ¶
29 Where the Charter is absolute, & liuerie vpon condition vpon which the estate shall operate, 222. b *
30 Where after an agreement of a feoffment be made vpon condition, liuerie is made absolute, how it shall be construed, 222. b ¶
31 Where liuery relateth to a deed made & dated in a forreine Kingdome, what shall operate thereby, 228. a †
vide tit. Feoffments.
London 288: 6.

¶ Maihem.

1 The signification & deriuation of the word, 126.a ¶. b † 288.a ¶
2 The nature and degree of the offence, 127.a ¶
3 Where the writ shall say (felonicè) albeit the offence be no felony, 127.a *.
4 The punishment anciently in an appeale of Mayhem, & at this day, 127.a *
5 A release of actions personall a good plea in Mayhem, 288.a ¶
6 Where a man was inuited for maiming himselfe, 127.b †

Machecollare, & Machecoulare quid, 5.a *.

¶ Maintenance.

1 The signification & deriuation of the word, 368.b ¶
2 The seuerall kindes of maintenance, and how punishable, 368.b ¶ 369.a †
3 Where an action of Maintenance lyeth for labouring the Jury, albeit they giue no verdict, or passe against the plaint, 369.a †
4 Against what persons a feoffment for maintenance was void by the Statute, 1. R. 2. & against what not, vide Stat. 1. R. 2. cap. 9.
vide Stat. 32. H. 8. cap. 9. made in suppression of Maintenance, and the exposition of the seuerall parts of that Statute.

¶ Maior & Communaltie, vide tit. Corporation.

¶ Manor.

1 The description of a Manor, and whence so called, 58.a ¶
2 How Manors began at first, 58.b †
3 Of what things a Manor may consist, 58.a ¶
4 The office & dutie of the Lord of a mannor, 59.b *
5 The office & dutie of a Steward of a Manor, vide tit. Steward.
6 Where a Court Baron holden out of the limits of the Manor shall bee good, & where void, 58.a *
7 Where & what things shall passe by the grant of a Manor without (cum pertinentiis) & where & what not, 121.b † vide tit. Grants & Prærogatiue.
8 Where a rent seek may bee parcell of a manor, secus of a rentcharge. 150.b * 153.a *
9 Where a reuersion vpon an estate talle shall be parcell of a manor, and passe by grant of the manor, 324.b ¶
10 Where vpon a lease of a manor except parcell, the part excepted shall continue parcell of the Manor, & where not, 324.b ¶. 325.a †
11 Where vpon tryall of a fact supposed within a manor the viine shall come out of the Manor, & where out of the towne, 125.b †. vide tit. Triall.

¶ Manumission.

1 The signification & deriuation of the word, 137.a ¶
2 The seuerall kindes of Manumission, 137. b †
3 By the Manumission of a villein cum tota sequela, what persons are infranchised, 3.a ¶
4 Where & what actions brought by the Lord against his villein shall bee an infranchisement to the villein and where & what not, 127.b ¶ 138. a ¶ & 136. b *
5 Where the answere of the Lord to the action of the villein shall bee an infranchisement to the villein, & where not, 125. a 138 b *
6 The solemnitie of Manumissions anciently, 137. b *
7 What estate or gift from the Lord to his villein shall be an infranchisement to him, and what not, 137. b ¶ 118. a
8 Where a void release, or an atturnment by the Lord to his villein shall be no infranchisement, 138. a *
9 Where the Appeale of the Lord against his villein for felony being found against him shal be an infranchisement to the villein, & wherein not, 138. b 139. b *
10 Where a neife marying a free man shall be infranchised, and for what times, 132.a * 136 b †. 137 b *
vide tit. villein.

¶ Marches quid, 106. b ¶

¶ Marchet quid, 117. b †. 140. a *

¶ Maremium quid, & vnde, 58. a ¶

¶ Mariage.

The Table.

¶ Mariage.

1 Maritagium quid & quotuplex, 21. b* 76. a*
2 Of what respect in the Law, 9. b¶
3 What Mariage at this day shall bee said consonant to Ecclesiasticall rites, & what not, vide Stat. 32. H. 8. cap. 38.
4 Where the Mariage of Ecclesiasticall persons formerly was void, & where but voidable, 136. a*
5 Where the Father shall haue the custody, and Mariage of his sonne or daughter, and where not, 84. a* ¶ b* 88. b¶
6 Wherefore the law gaue the mariages of heirs females to the Lord by Knights seruice, 78. b*
7 Where the Lord shall haue two yeares to make a tender of mariage to the heire female of his tenant after her age of 14. & where not, 75. a & b 78. b¶
8 Where the Lord shall haue the double value or forfeiture of the the mariage, & where not, 79. a † b ¶ 82. b †*
9 Where the Executors or Administrators of the Lord shall haue such two yeares to make a tender, 79. a*
10 Where the tender of mariage to an heire female before her age of 14. shall bee good, & where not, 79. a*
11 Where the Lord may tender mariage to the heire already maried, & where not, 79. b¶
12 Where the Lord shall haue the custody of the heire maried in the life of his ancestor, & where not, 80. a †
13 At what age each party maried may agree or disagree to the mariage, and at what not, 79. b 80. a †
14 Where the Lord shall haue the single value of the mariage without tender, 82. a*
15 What remedy the Lord hath for the single value or forfeiture of the mariage, 79 a* 82. b †*
17 For disparagement in mariage, vide tit. Disparagement. vide tit. Wardship

¶ Mariscus & mora quid, 5. a †

¶ Marshall.

1 The deriuation of the word, 74. a †
2 The office of Marshall of the Kings hoste, 74, a*
3 Who first Earle Marshall, 106. a †
4 The iurisdiction of the Court of the Constable & Marshall & according to what law they proceed, 391. b †

¶ Maxime.

What & whence so called, 11. a † 343. a †
Not to be disputed, 11. a † 67. a † 343. a †

¶ Meason.

What, and how fauoured in Law, 54. b*. 56. b †. 200. b †

¶ Merchants.

1 How fauoured in law, 2. b †
2 Where the ioynt debts, &c. of Merchants by the death of one shall not suruiue to the other, 182 a*
3 Where one ioynt Merchant shall haue allowance of his expenses & charges in an accompt against him by his Companion as Receiuer, 172. a ¶

¶ Mesne

1 Whence such writ so called, and where it lyeth. 100, a †*
2 The seuerall iudgement in a writ of mesne, 100. a*
3 The proces in such writ, ibid.
4 Where by purchase of the tenancy by the Lord paramount the mesnalty shal be extinct, 152. b
5 Where the Lord paramount release or confirme to the tenant to hold in frankalmoigne or by lesser seruices the mesnalty shall bee extinct, 152. b*
6 What remedy the mesne hath for the surplusage of his rent vpon such extinguishment, 153. a †
7 Where and for what cause the tenant shall forcludge his mesne, & where & for what not, & what persons shall be bound by such forcludger, vide tit, Foreiudger, & Stat. W. 2. cap. 9.
8 Where the arrerages of the mesnalte shall be lost by acceptance of seruices by the hands of the tenant, vide tit. Acceptance.
9 Where the wife shall haue a writ of mesne vpon an acquitall granted to her husband, 141. a*

¶ Minera quid, and what shall passe by that name, 6. a. †

¶ Mise.

The deriuation and seuerall acceptions of the word 294. b †
vide tit. Right.

¶ Monke.

1 In what cases a Monke may maintaine an action at the Common Law, & in what not, 132. b*
2 The seuerall orders of Monkes & Friars formerly in this Realme, 132. a*

¶ Monster.

What issue reputed in law a Monster, & what not, 7. b ¶. 29. b ¶

¶ Money.

1 The deriuation of the word, 207. b †
2 Its Synonyma, & their Etymologies, ibid.
3 What shall be said lawfull money of England, & what not 207. a ¶ 208. a †
4 The value of a marke, pound, shilling, &c. anciently, 294. b †

¶ Mordanceſter.

1 Where such writ lieth, 159. a ¶
2 Where it lyeth not against priuies in blood, 242. a ¶
3 Where it lyeth not against a Bastard eigne, 224. b †
4 Where in a nuper obiit the def. claime by purchase, the plaintife may haue a Mordanceſter against her for the whole, vide tit. Estoppell.

¶ Mortmaine.

1 The deriuation of the word, 2. b* ¶
2 What person shall enter for alienation in Mortmaine, & within what time, 2. b*
3 Where the appropriation of a Church shall be Mortmaine, vide tit. Appropriation.

¶ Morgage.

1 The signification & deriuation of the word, 205. a † ¶
2 Where a day of payment being limited a tender by the heire of the Morgagee or after his death shall bee a good performance of the condition, 205. b* ¶ 208. b †
3 What persons may tender money in performance of a condition in morgage, & what not, 206. a † b ¶ 208. b*. 209. a †.
4 Where payment by a stranger shall bee a good performance, & where not, 206. b ¶ 207. a †
5 Where the morgagee die before the day, to whom payment ought to be made in performance of the condition, vide tit. Payment.
6 Where no place is expressed for the payment of money vpon the morgage where the tender shall bee made,

210.

210. a ¶ b vide tit. Tender.
7 ¶ Where no time being expressed notice of payment shall bee giuen to the Mortgagee, 211. a ¶. vide tit. Notice.
8 ¶ Where acceptance of a collaterall thing by the Mortgagee in satisfaction shall bind him, & where not, 122. b *. vide tit. Acceptance.
vide at large in tit. Conditions.

¶ Mulier.

The seuerall significations of the word, & how taken in the Law of England, 243. b ¶
vide at large in tit. Bastardy.

¶ Murder.

1 The Etymology and signification of the word, 287. b ¶
2 How it differeth from Homicide and Chancemedley, 287. b ¶. vide tit. Felony.

¶ Name.

1 What shall be said a good Name of Purchase, & what not, vide tit. Purchase.
2 ¶ Where the mispriſion or alteration of the Name shall viciate a grant, & where not, 3. a †.
3 ¶ Where a grant without mention of surname or Christian name or both shal be good to the grantee, & where not, 3. a * ¶
4 ¶ Where a man is baptized by one Name & after confirmed by another, which he shall vse, 3. a ¶
5 ¶ Where the priuiledges, &c. of a Corporation shall remaine notwithstanding the alteration of the Name, 102. b ¶
For names of dignitie, vide tit. Nobility.
¶ Neife de en & trene, 25. b †

¶ Nobility.

1 The seuerall limitations of Nobility, and what estate of Nobility the King may grant, and what not, 16. b † *
2 ¶ When the title and degree of Duke, Marquesse, and Viscount began in England, 69. b *
3 Earles, Barons, &c. how created by writ in ancient times, & when creations by Patents first began, 9. b * 16. b † *
4 The reuenue and valuation of a Duke, Marquesse, Earle, Baron, &c. vide tit. valuation & Barony.
5 ¶ What shall be said the Reliefe of a Nobleman of each degree, 69. b †
6 ¶ Where a Noblewoman by marying one inferiour to her degree shall lose her Nobilitie, and where not, 16. b *
7 ¶ Where a dignity or name of Nobilitie or office of honour descend vpon diuers daughters, how it shall be diuided, and which shall haue the dignity & execute the office, 165. a *
8 Issue of Duke, Earle, &c. or no Duke, &c. how tryable, 16. b *
Beauchampe King of Wight, 83. b *
vide tit. Barony.

¶ Non Compos mentis, vide tit. Dum non Compos, &c.

¶ Nonsuit.

1 When the Plaintife said to be Nonsuit, 138. b ¶
2 The seuerall kindes of Nonsuit, ibid.
3 The difference betweene a Nonsuit, Retraxit, & a Departure, vide tit. Retraxit.
4 In what actions Nonsuit after apparance shall bee peremptory, & in what not, 139. a *
5 ¶ Where the Nonsuit of one demandant, or plaintife shall be the Nonsuit of both, and where not, 139. a ¶
6 ¶ What persons may be Nonsuit, & what not, 139. a † 227. b *
7 At what time the plaintife may bee Nonsuited, and at what not, 139. a †. vide Stat. 2. H. 4. cap. 7.

¶ Notice.

1 The seuerall kindes of Notice, 309. b *
2 Notice an incident inseparable to atturnment, ibid.
3 Where the Lord shall not bee compelled to auow vpon the feoffee of his tenant without Notice, 269. b ¶
4 Where the Obligor or Mortgagor hath time during his life to pay money, payment at the place without Notice shall be no performance, 211. a * ¶
5 Where the grantee of a reuersion shall not take aduantage of a condition within 32. H. 8. without Notice to the lessee, 215. b †
6 Where a man is bound that I. S. shall infeffe a stranger such a day, Notice ought to bee giuen by I. S. to the stranger, 211. a ¶

¶ Nusance.

1 Where a man may haue a particular remedy by action for a publick Nusance, & where not, 56. a † *
2 How publicke Nusances punishable.

¶ Obligation.

1 The legall acception of the word, 172. a †
2 Where Obligations made in the third person, shall bee good, & where not, 229. b ¶ 230. a †. vide Stat. 34. E. 3. cap. 4.
3 Where an Obligation made & dated beyond sea shall bee good, & how triable, 261. b ¶. vide tit. Triall.
4 Where vpon an Obligation to pay money at seuerall dayes, a debt lyeth not till all the dayes incurred, vide tit. Debt.
5 Where an Obligation hauing a Condition impossible, or against Law shall bee good, & where not, vide tit. Condition.
6 Where the intermariage of one feme Obligee with the Obligor, shall extinct the debt as to both, 264. b ¶
7 Where a release of all actions shall discharge an Obligation before the day of payment, vide tit. Releases.

¶ Occupation.

1 The seuerall significations of the word, and to what properly applied, 249. b *
2 The writ of Occupauit, & where it lyeth, ibid.

¶ Occupant.

1 Who said to bee an Occupant, 41. b † *
2 Of what inheritances Occupancie may bee, and of what not, 41. b * 388. a †
3 How Occupancie may be preuented, 41. b * 387. b
4 Where an Occupant shall bee liable to waste & payment of rents, 41. b †
5 No Occupancie against the King, 41. b *

¶ Office and Officers.

1 Offices of Iustice, &c. granted to persons insufficient, void, 3. b *. vide Stat. 12 R. 2. cap. 2.
2 Such Offices not grantable in reuersion, 3. b *
3 Where non vser shall bee a forfeiture of an Office, and where not, 233. a ¶
4 Where Offices may be executed by deputie, & where not, 234. b †

Where

5 Where the Grantor may ouſt his Officer at his pleaſure, & where not, 233. a ¶ b †
6 What perſons capable of Offices of honour, & what not, 107. b. per tot. pag.
7 What perſons capable of an Atturniſhip in the Kings Court, & what not, vide tit. Atturney.
8 What perſons capable of the Stewardſhip of a Manor, & what not, 3. b * 61. b †
9 Where the ſelling, or contracting for an Office of Juſtice, &c. ſhall diſable the partie to be capable thereof. 234. a *
10 Where an Office of Honour deſcend vpon diuers daughters, how and by whom it ſhall bee executed, vide tit. Nobilitie.
11 Where and what Offices may bee entailed, & where and what not, 20. a *
12 Where a man ſhall be tenant by the courteſie of an Office, 29. b †
13 What things may be appendant to an Office, and ſhall paſſe by grant of the Office, 49. a. * vide tit. Appendant.
14 The Office of the Kings Almner deſcribed, 94. a ¶
15 Office of Admirall, vide tit. Admirall.
16 Office of Marſhall, vide tit. Marſhall.
17 Office of Sherife, vide tit. Sherife.
18 Office of Eſcheator, vide tit. Eſcheator.
19 Office of Steward of a Court, vide tit. Steward.
20 Office of Baylife, vide tit. Baylife.
21 Office of Ordinary, vide tit. Ordinary.

¶ Office, or Inquiſition.

1 WVhere the eſtates of particular tenants ſhall bee ſaued, albeit they bee not mentioned within the Office, 77. b †
2 What remedy for the heire where he is found by the office of fewer years, than in truth he is, ibidem.
3 What remedie for the true heire, where another is found heire by the Office, and where one is found heire in one Countie, and another in another Countie, 77. b * 243. a *
4 What remedie where one is vntruly found by Office Iunatike or dead, &c. ibidem.
5 Where vpon Office found that a perſon attainted is ſeiſed, the partie hauing title may haue a trauers or monſtrans de droit, 77. b *
6 Where vpon an Ignoramus found by Office, it ſhall bee taken to be a tenure in Capite, & where not, ibid.
7 Where the heire within age ſhall haue a trauers to an Office, which falſly findes an immediate tenure of the King, 77. b ¶
Vide Stat. 2. E. 6 cap. 8. concerning the finding of Offices, and the ſeuerall benefits introduced by that Statute.

¶ Ordinary.

1 THe Office & duty of the Ordinary, & whence ſo called 96. a * 344. a *
2 Where a releaſe of an action by the Ordinarie ſhall bee good, 292. b †
3 Where a Church donatiue ſhall be viſited by the Patron, & not by the Ordinary, 344. a †
4 Where the King found a Church donatiue without any ſpeciall exemption, his Chancellor ſhall viſite, & not the Ordinary, 344. a *
5 Where the charge of the Parſon and Patron without the Ordinary, and where of the Patron & Ordinary without the Parſon ſhal be concluſiue to the ſucceſſor, & where not, vide tit. Confirmation, & tit. Parſon.

¶ Ouſter le maine, vide tit. Liuery.

¶ Outlawrie.

1 THe deriuation of the word, 122. b ¶
Why a feme outlawed is called a waiue, ibid.
2 Where Outlawry in the Plaintife ſhall diſable him to bring an action at the Common Law, and where not, 128. a * ¶
3 In what actions Outlawrie may be pleaded in diſabilitie of the perſon, & in what not, 122. a * ¶
4 At what age a man may be outlawed, and at what not, 122. b ¶ 128. a ¶
5 Where in a plea of Outlawry the Defendant ought preſently to ſhew the record in Court, & where he ſhal haue a day ouer, 128. b †
6 Where Outlawrie in a forren iuriſdiction ſhall not diſable the Plaintife at Weſtm. 128. a ¶
7 Outlawry in the Executor no diſabilitie to bring an action in right of his Teſtator, 128. a *
8 Outlawry in the Mayor no diſabilitie to the corporation to bring an action, ibid.
9 In what actions Outlawry may be pleaded in barre, & in what not, 128. b *
10 Where proces of Outlawry lay at the Common Law, & in what actions it lyeth at this day, 128. b * ¶
11 What things are forfeitable by Outlawry, & what not, vide tit. Forfeiture.
12 How anciently perſons Outlawed might bee put to death by any man, and when that was reſtrained, 128. b *
13 The ſeuerall wayes of reuerſing Outlawries, 159. b †
14 What matters ſhall bee ſaid good cauſes to reuerſe an Outlawry, and which of them are pleadable, and which not, 259. b † 260. b †
15 Outlawry no preiudice to the party vntill returne of the Exigent or remouall by Certiorari, 128. b †. 288. b. *.
16 Where a perſon outlawed may be a witneſſe, and where not, 6. a † *
17 Where a perſon outlawed cannot bee an Auditor, Iuror, &c. Ibid. vide tit. Iuror.
18 The forme of the Iudgement vpon Proces of Outlawrie in the Countie Court, & the forme in London, 288. b *

¶ Oxgang of land what, 69. a *

¶ Panel.

THe ſignification of the word, 158. b *
vide tit. Array, & Challenge.

¶ Pardon.

1 BY a Pardon of all felonies what crimes anciently, & what at this day are pardoned, vide tit. Felony.
2 Pardon after Attainder no reſtauration of bloud, 391. b ¶. 392. a † vide tit. Corruption of bloud.
3 Where a Pardon after the action brought, and before iudgement ſhall diſcharge the partie of an amerciament, 126. b ¶

¶ Parke, vide tit. Foreſt.

¶ Parliament.

1 THe deriuation of the word, 110. a †
2 The Court of Parliament what, and of what members it conſiſteth, 109. b ¶

How

3 How called in ancient times, & how called at this day in other Countries, 110. a †
4 The Antiquitie and Jurisdiction of this Court, 110. a. ¶.
5 The number of Sessions of parliament since the Conquest, ibid.

¶ Parolle demurre.

WWhere the paroll shall demurre for the nonage of one parcener, where her sister is of full age, 164. a †. vide tit. Age.

¶ Parson and Patron.

1 The legall acception of the word (parson) & why so called, 300. a ¶
2 Who said to be a parson impersonee. 300. b †
3 To what intents a parson or Vicar esteemed in Law to haue a fee simple, & to what, but for life, 67. a * 300. b ¶ 341. a
4 What Actions a Parson may maintaine in his politicke capacity, and what not, 341. a. ¶ b. †. ¶. 342. a ¶
5 Where one Church may haue two parsons, & where two Incumbents shal be said but one parson in a Church, 18. a †
6 Where two parsons bee in debate for Tithes aboue the fourth part, one man being patron of both Churches, no Iudicauit lyeth, 243. a *
7 Where the grant, &c. of the parson shall binde his successors by the confirmation of the patron, &c. and what shall be a sufficient confirmation, & what not, vide tit. Confirmation.
8 Where a rent granted by the patron and Ordinary in time of vacation shall binde the succeeding parson, 343. b ¶
9 Where an annuity granted by the parson and Ordinary shal binde the successors without assent of the patron, & where not, 343. b ¶ 344. a †
10 Where the patron and Incumbent may charge a donatiue in perpetuitie, 301. b † 344. a †
11 Where the parson shall haue aide of his patron and Ordinary, vide tit. Aid.
12 Where a Lease by the parson shall bee good against his successour, and where void, and where but voydable, vide tit. Leases. 18
13 To what purposes a man said to bee a parson by admission & institution, before induction, & to what not, vide tit Q. Impedit.
14 Where the Alienation of the Parson shall bee no discontinuance to his Successour, vide tit. Discontinuance.
15 The fee simple of the parsonage in Abeiance, and in no person certaine, 341. a 343. a
16 Where by the death of the parson the freehold shall bee in abeiance, 342. b ¶
vide tit. Presentation, & Q. Impedit.

¶ Partition and Parceners.

1 PArceners, whence so called, 163. b † 164. b †
2 The Description and Division of Parceners, 163. a
3 Of what inheritances coparcenary may bee, & of what not, & in what manner partition shall bee made, 164. b * ¶ 165. a b †.
4 Where Parceners shall be deemed in Law as one heire, and where as seuerall heires, 163. b. ¶. 164. a. †. 196. b *.
5 Where one parcener shall haue the priuileges of her age, notwithstanding the full age of her sister, vide tit. Age & Paroll demurre.
6 To what purposes parceners are said to haue seuerall freholds, & to what but one, 164 a *
7 Where parceners in seuerall degrees shal ioyne in a reall action, & where not, 164. a * ¶ 169. a ¶ b †, vide Stat. Gloces. cap. 6.
8 Where by the disclaimer in bloud of one parcener in a Nuper obiit, the other shal haue a Mordancester against her for the whole, vide tit. Estoppell.
9 The seuerall wayes of making partition, and what partition shall binde, and by what persons, and what not, 165. b 166. a, & b 167. a 169. a ¶ 170. a ¶ b. 171. a b †.
10 What act by one parcener shall bee deemed in Law a diuision of the Coparcenary, and what not, 167 b † *. 174. b ¶
11 Where in a real action by one parcener against her sister, iudgement shall not bee giuen in seueralty, vide tit. Iudgement.
12 The seuerall iudgments in a partition, & vpon which a writ of Error lyeth, 167. b * 168. a †
13 Where vpon partition made, the eldest daughter shall haue election, & where not, 166. a ¶ b † 167 a † 168. a †. b ¶ 186. b ¶
14 Where such Partition shall bee good without Deed, secus betweene Joyntenants, 169 a †. vide tit. Joyntenants.
15 Where a rent, &c granted for owelty of partition shall be good without deed, & where not, 169 a ¶ b † vide tit. Rents.
16 Where a rent is granted generally for owelte of Partition, out of what land it shall bee intended to issue, 169. b †
17 Where a rent is granted to two coparceners for owelte of partition, or where reserued vpon a feoffment in fee, in what nature they shall be said seised of this rent, 169. b * ¶
18 Where a rent granted by the husband for owelte of partition shall binde the wife, 169. b ¶
19 Where partition made betweene the issue in taile, and her sister not inheritable to the taile shall binde the issue, secus of a partition betweene issue and a stranger, 170. b †
20 Where a partition betweene Bastard eigne and Mulier puisne, shall binde the mulier and her heires, 170. b * 244. b †
21 Where a partition in Chancery shall bee auoided by an Infant, secus where a writ of partition is brought & iudgement had, 171. a
22 Where the issue of one parcener vpon the not discent of assets shall enter into the moitie of lands in taile allotted to the other parcener, 172. b 173. a †
23 Where by a partition against common right, the parcener shall be liable to charges made since the discent, 173. a ¶
24 Where by the eviction of part of the land allotted to one parcener, the whole partition shall bee defeated, and where not, 173. b * ¶ 174. a * †
25 Where the priuitie betweene parceners being destroyed the condition and warrantie in Law shall be extinct, 174. a ¶

26 What shall be said a sufficient continuance of the priuity to take aduantage of such warranty, &c. & what not, 174. a* b†

27 Where the Feoffée of one parcener shall haue aid of the other parceners to deraigne a warrantie paramount & where not, 174. a ¶ b†

28 Where, by whom, and against whom a writ of Partition lay at the Common Law, and where and by whom, it lieth at this day, 175. a b †. vide Stat. 32. H. 8. cap. 32.

29 The difference betwéen a partition & Exchange, 51. a ¶ 172. b* 176. a*

30 Parcener by the custome described, 175. b*

31 The manner of partition in Hotchpot, and where such partition shall bée made, & where not, 167. a b 177. a 178 b 179. a b

32 Who ought to bée first agent in such Partition, and to whom the lands shall descend in the interim, 176. b †

33 Where after such partition the lands giuen in Frankmariage shall bee of the nature of lands descendible, 177. b*

34 Where in such partition the value of the lands, &c. shall be accounted as at the time of the partition, & not as at time of the gift, 179. a †

35 Upon whom the reuersion of such estate in Frankmariage shall descend, 179. a*

36 Where a partition betwéen three parceners, one to hold in seueralty, & the other in parcenary shall be good, & where not, 180. a †*

37 Where a release by one parcener to another shall bée good, & how it shall enure, vide tit. Release.

38 Where vpon a ioynt Action and recouery by diuers parceners damages shall enure to them in seueralty, vide tit. Damages.

39 Where the entry of one parcener shall be accounted in Law the entry of both, and where not, vide tit. Entry Congeable.

40 Where one parcener enter or recouer, the estate being put to a right, the other also shall enter & occupie with her, & where not, vide tit. Ioyntenants.

41 Where one daughter disseise the Discontinuée of her father to the vse of her selfe & her sister, & being ousted by the Discontinuée recouer in an Assise, by the agréement of the other sister after they shal be ioyntenants & not parceners, 374. a ¶

42 Where a tenancy by homage descend vpon diuers parceners, the eldest alone, & where all shall doe Homage, 67. a ¶ b†

vide tit. Ioyntenants.

¶ Payment.

1 Where payment of money in shew & apparance, & not really, shall be no performance of a condition, 209. b*

2 Where the Mortgagée dying before the day, payment shall be made to his Executors, & where to his heires, 209 b* ¶ 210. a †

3 Where vpon condition of payment to one, his heires and assignes, payment to his Executors shall be a good performance, and where not, 210. a*

4 Where vpon payment of money at seuerall dayes, an action lyeth for not payment at each day, & where not before the last day be past, 47. b* 292. b ¶

¶ Per quæ seruitia.

1 Where tenant in taile shall be compelled to Atturne in a Per quæ seruitia, 316. b †. vide tit. Atturnment & Quid Iuris clamat.

2 Where in a Per quæ seruitia the tenant shall not bee compelled to Atturne vntill allowance of his priuileges, 320. b* ¶. vide tit. Atturnment, & Quid Iuris clamat.

3 Where vpon grant of a Seigniory for life, the Remainder in fee, hee in the Remainder after the death of the tenant for life shall haue a Per quæ seruitia, 252. a ¶.

¶ Pew quid. 5. b ¶

¶ Pyracie vnde, vide tit. Attainder, & tit. Felony.

¶ Pleadings and Pleas.

1 Placitum, vnde, 17. a* 303. a †

2 The Commendation of good pleading, & the meanes to attaine to it, 17 a* 168. a † 303. a †

3 Pleading a good argument in Law, 115. b*

4 Rules concerning the manner & order of good pleading, 303. a*

5 The seuerall parts of pleading, and by what names distinguished, 303. b ¶

6 Where plea of euery man shall be construed most strongly against himselfe, 303. b† ¶

7 Where in pleading necessary circumstances implied by Law, need not be expressed, 303. b* 310. b ¶

8 Where a defectiue plea shall be made good by the plea of the aduerse partie, & where not, 303. b*

9 Where surplusage shall vitiate a plea, and where not, 303. b*

10 What pleas ought to bée auerred, and what not, 303. a ¶.

11 Plea by argument or rehearsall, not good, 303. a ¶

12 What certainty is required in Counts, Barres, Replications, Estoppels, &c. 303. a*

13 Where an inducement to the matter generally alleaged in the plea, shall bee sufficient, secus of the matter it selfe, 303. a ¶

14 Where a generall allegation of procéedings in Ecclesiasticall Courts, or a matter of record in pleading shall be sufficient, & where not, ibid.

15 What estates in pleading may generally bee alleaged, & where the commencement of particular estates must be shewed, & the like of the tenant auerred, & where not, 303. b †

16 Where and in what kinde of pleading the Donée or Lessee ought to alleage seisin in his Donor or Lessor, and where Cum dedisit, or Cum dedit, &c. 303. a*

17 Where the party may plead performance of all couenants generally, and where they ought to be specially pleaded, 303. b*

18 Where the conclusion of a plea (Et issint & sic) shall bee a waiuer of the speciall matter, and where not, ibidem.

19 Where a thing is done by force of a warrant or Authoritie, it ought to be pleaded, 283. a* 303. b †

20 Where a speciall cause of Iustification or excuse may bée giuen in euidence, & where it ought to bee pleaded, 282 b ¶. 283 a. per tot. pag. vide tit. Stat. 23. H. 8. cap. 5. & 7. Iac. cap. 5.

21 Where the tenant by his false plea shal lose a benefit or aduantage giuen him by the Law, 33. a † 366. a*

22 How a feoffment in fee, and a Lease for yeares ought to be pleaded, 200. b ¶ 201. a †

23 Where in pleading an estate of freehold, the party shall not plead an entry, secus of an Estate for yeares, 201. a †

24 Where in pleading the party shall be said Seisitus in dominico

dominico vel de feodo, and of what things vt de feodo & iure, 17. a ¶ b *
25 The necessitie of making a defence in euery Plea, 127. b * ¶.
26 The forme of a defence in a personall action, 127. b *
27 The effect & consequence of such defence, 127. b * ¶
28 For departure in pleading, vide tit. Departure.
29 For duplicitie of pleading, vide tit. Double Plea.
30 Where the matter being sufficiently shewed, the count shall not abate for want of forme, Vide Stat. 36. E 3. cap. 15.
31 Where at this day after demurrer, iudgement shall bee giuen according to the matter in Law without respect to the imperfection of the Pleading, 304. b * ¶
32 The course & estimation of pleading in the time of E. 1. E. 2. E 3. H. 6. &c. 304. a ¶ b *

¶ Plenartie.

1 WHere & against what persons Plenarty shall be by institution, & against whom not vntill induction, 119. b ¶ 344. a ¶
2 Where & against whom Plenartie was a good plea in a quare Impedit, or Darrein præsentment at the Common Law, & where not, 133. a ¶ 134. a †
3 Where tryall of plenartie shall be by the Common Law, & where by certificat of the Bishop, 344. a ¶
Vide tit. quare Impedit.
Plowd 221: f.
¶ Plow-land what, 69. a ¶ 86. b *

¶ Possession.

1 COntinuance of Possession, a violent presumption of title, 6. b ¶
2 Where a long possession anciently tooke away a right of entry, 237. b *
3 Where possession of parcell of the land demised shall bee a possession of the whole, & where not, 48. b ¶
4 Where the Possession of a Lessee for yeares, shall be the possession of him in the reuersion, 15. a * 243. a †
5 Of what things a man cannot bee put out of possession, and of what onely at his owne election, 306. b * 307. a †
6 Where diuers persons being vpon the land, the Law shal adiudge the possession in him that right hath, & where not, 368. a † *
7 Where the Seisure of the King without cause shall bee adiudged the possession of him for whose cause he seised 245. b †
8 Where the recontinuance of a right of Possession out of the hands of him that hath the absolute right, shall draw with it the meere right to the land, & where not, vide tit. Right.
9 To what purposes the Gardein said possessed of his ward before entry, & seisure, vide tit. Gardein.
10 What act shall put the patron out of possession of an Aduowson, and what not, vide tit. Præsentation, & quare Impedit.
11 What shall bee a sufficient possession to make the sister or vncle, &c. to inherit, & what not, 11. b * ¶ 14. b 15. a. 281. a ¶
12 Of what things & estate a Possessio fratris may be, & of what not, 14. b * ¶ 15. b † *
13 Where there shal be a Possessio fratris without entry, & è conuerso, 15. a * ¶ 191: b *
14 Where a seisin shall bee sufficient to entitle the husband by the courtesie that shall not make a Possessio fratris, vide tit. Courtesie of England.

¶ Possibilitie.

1 A Gift to a man & woman not married, or where one or both of them are maried elsewhere, & the heires of their bodies a good title for the possibilitie, 20. b ¶. 25. b ¶ vide tit. Grants.
2 Possibilitie vpon a possibilitie reiected in Law, 25. b ¶ 184. a †

¶ Pound. vide tit. Distresse.

1 THe writ of Parco fracto whence so called, & where it lyeth, 47. b *
2 Where the Defendant may iustifie in that writ & where not, ibidem.

¶ Præcipe.

THe seuerall writs of Præcipe, 101. b † 139. b *

¶ Premunire.

1 WHence such writ so called, 129. b * ¶ The iudgement in a Præmunire, 129. b ¶
2 The nature & qualitie of the offence, 130 a †
3 What lands, &c. forfeitable by attainder in a Præmunire & what not, 130. a † 391. a ¶
4 Where such attainder shall be a good plea in disabilitie of the person to bring an action, 129. b *
5 Such attainder no corruption of bloud, vide tit. Attainder.

¶ Prerogatiue.

1 THe Etymologie and signification of the word, (Prerogatiue) and by what names called anciently, 90. b *
2 Where the King by his prerogatiue shall haue the custodie of Lands of the ward, holden of other Lords, & of inheritances which lie not in tenure, & where not, vide tit. Wardship.
3 Where a grant of a Reuersion to or by the King, shall be good without Attornement, 309. b * 314. b *
4 Where the title of the King & a common person concurre, the Kings title shall be preferred, 30. b †
5 Where a man being indebted to the King, & to a common person, the common person shall be satisfied before the King, & where not, 131. b *
6 Where the King after seisure of the temporalties shall present to a Church which voyded in the life of the Bishop, 90. a ¶
7 Where the King giue Land with his Cosen in Frankmariage, by the death of the Feme without issue, the estate of the husband shall determine, secus of a gift by a common person, 21. b ¶
8 Where a Q. Imp. lay by the King at the Common Law vpon an vsurpation, but not by a cõmon person, 344. b †
9 Plenarty in a quare Imp. no plea against the King, 133. a ¶ 344 b †
10 Where the King may reuoke his presentation after institution, & before induction. 344. b *
11 In what cases the Kings grant with a Non obstante shal dispense with the penaltie of a Statute, & in what not, & where it shall be good without a Non obstante, 99. a † 120. a * 234 a *
12 What shall be said a good plea against the Letters Patents of the King, & what not, 260. a *
13 By what act an estate setled in the King shall be deuested without petition or Monstrans de droit, & by what not, 354. b *. vide tit. Entry Congeable, & Remitter.

14 Where an Aduowson shall passe from the king within the words (cum pertinentiis) without expresse mention, & where not, 77. a ¶ vide tit. Grants.

15 Where the king shall bee bound by a warrantie, and where not, vide tit. Warrantie.

16 Where an Act of parliament shall binde the king without being named, and where not, 43 b * 98. b ¶ 99. a * 120. a *

17 Where an Act done by the king during his nonage shal binde him, 43. a ¶

18 Where a gift to the king, without the words (Heires or Successors) shall passe a Fee simple, 9. b ¶

19 Vpon such purchase by the king, in what capacitie hee shall be said seised, 16. a † 190. a ¶

20 Where the person of the king shall alter the nature of a Discent, 15. b ¶

21 Where the grant of the king, wherein he is deceiued, shall be void, 27. a *

22 No Laches imputed to the king, 41. b * 57, b * 90. b *. 118. a ¶ 119. a † 294. b † 344. b †

23 Where vpon a gift to the king & the heires of his bodie, before the Stat. W. 2. an alienation by him before issue, was no barre of the Reuersion, 19. b †

24 Where the Queene shall participate of the prerogatiue of the king, & where not, vide tit. Queene.

¶ Prescription.

1 The definition of a prescription, 113. a ¶

2 How it differeth from a Custome, 113. b

3 The incidents inseparable to a prescription, 113. b ¶

4 To what things a man may make title by prescription without Charter, and to what not, 114. a ¶ b †. 144. a ¶

5 Where a title to lands by prescription shal be good, 195. a ¶

6 By what meanes a title by Prescription or Custome may be lost by interruption, and by what not, 114. b *

7 Where a prescription or Custome may bee alleaged against an Act of parliament, & where not, 111. b † 115. a * ¶ b †.

8 How a man ought to prescribe in things which lie in Grant, and how in things which lie in Liuerie, 121. a vide tit. Que Estate.

9 What shall be a sufficient continuance to make a title of prescription, and what not, 113. b 114. a vide tit. Custome.

¶ Presentation.

1 The description & derivation of the word, 120. a †

2 How many seuerall waies a Church presentatiue may become void, 120. a †

3 Where a presentation by parol shall bee sufficient, 120. a. *.

4 Where one Joyntenant or Tenant in Common present, or both present seuerally, the Ordinarie may admit, or refuse such presentee at his pleasure, 186. b ¶

5 Where two parceners present one Clerke, and the other two another, the Ordinarie may refuse both, ibidem.

6 Where the presentation of one parcener in the turne of another after partition shall not put the other out of possession, 243. a *

7 Where the seuerall presentations of parceners shall not make the Church litigious, ibid.

8 Presentation in time of warre, & admission & institution in time of peace shall not put the patron out of possession, 249. ¶ b

9 Where a presentation to a Church in time of vacation of an Abbathy shall not put the Successor out of possession, 263. b *

10 Where by presentation to a Church donatiue, & admission & institution, the Church is for euer become presentatiue & where not, 344. a †

11 How Donatiues first began, & how they may bee created at this day, 344. a *

12 Where the king may reuoke his presentation before induction, vide tit. Prerogatiue.

13 Where the husband shall present to a Church, which voided in the life of his wife, 120. a ¶ vide tit. Baron & Feme.

14 Where vpon descent of an Aduowson to diuers Parceners, the eldest & her Assignée shall haue the first presentment, 166. b * 186. b ¶

¶ Præsumptio quid, & quotuplex, 6. b ¶

¶ Primer seisin.

1 Where it shall be due to the king vpon the death of his Tenant, & where not, 77. a *

2 What value shall bee paid to the king vpon Liuerie or primer seisin, 77. a *

3 At what age the king shall haue primer seisin of the heire of his Tenant in Socage, 91. b † vide tit. Liuery.

¶ Priuies, and Priuitie.

1 The seuerall sorts of Priuies, 271. a *

2 What priuitie betweene Joyntenants, what betweene Tenants in Common, & what betweene parceners, 169. a * 200 b *

3 What priuitie requisite to an Attornment vpon grant of the Seigniorie, and what not, vide tit. Attornment.

4 Where & to what releases priuitie requisite, & where & to what not, vide tit. Releases.

5 What act by one parcener shall bee a destruction of the priuitie, as to take aduantage of a warrantie or Condition in Law, & what not, vide tit. Parceners.

6 What act of the Tenant by homage Auncestrell shall be an interruption of the priuitie betweene him and his Lord, & what not, vide tit. Homage Auncestrell.

7 Where a Priuitie once discontinued shall for euer bee extinct, 103. a * ¶ b †

¶ Profession.

1 When a man shall be said to be professed in Religion, 132. a † 136. a †

2 At what age a man may be professed in religion, 137. a ¶

3 To what purposes a profession hath the effects of a naturall death, & to what not, 132. a ¶ b † *

4 Where and what profession in Religion shall disable the Partie to bring an Action, and where and what not, 132. b *

5 Where the husband and wife may be professed in religion without either others consent, & where not, 132. b * vide tit. Monke.

¶ Propertie.

1 The seuerall kindes of Propertie, 145. b *

2 Where in a Replevin, the claime of Propertie by the Defendant, shall hinder the deliuerie of the goods by the Sheriffe, 145. b *

3 Such claime of propertie by the Baylife or seruant of the Defendant not auaylable, ibidem.

4 Where notwithstanding a propertie once tried and found for the Defendant a Replevin lieth, and where not, vide tit. Replevin.

¶ Protections.

¶ Protections.

1 The seuerall sorts of Protections 130 a*
2 Protections Cum Clausula volumus, why so called, & the seuerall kindes of them, 130. a*
3 Protections quia prosecturus, and quia Moraturus, what and why so called, ibidem.
4 For what causes such Protections are grantable, & for what not, 130 a ¶
5 For what persons such Protections are allowable, & for what not. 130. a ¶ b†
6 In what action or plea a protection cast for one Defendant, shall put the plea without day for all, & in what not, 130. a †
7 Where and what protection may bee purchased pendente placito, and where & what not, 130. b*
8 At what time a protection may bee cast, & at what not, ibidem.
9 Where a protection cast at the Nisi prius, & repeald before the day in Banke, shall not withstanding saue the default of the partie, & where not, 130. b*
10 For what continuance of time such protections ought to be, 130. b* 254. b ¶
11 To what places such protections ought to bee directed & to what not, 130. b ¶
12 In what actions protections are allowable, & in what not, 131 a†*
13 Vnder what seale, & to whom they are directed, 131. a*
14 What persons ought to allow, or disallow of them, 231. a ¶
15 By whom they may be cast, & in what manner, 231. a ¶
16 By what meanes they may bee auoided, & by what not, 131. a ¶ b†
17 Where vpon a repeale of the protection, a Resummons or Re-attachment may be had within the yeare, 131. b. †.
18 Where a returne into England to prouide necessaries for the warre, shall bee no breach of the conditionall clause in a protection, vide stat. 13. R. 2 cap. 16.
19 Protection quia indebitatus nobis existit what, & where it lieth, 131. b*
20 Protection cum Clausula volumus why so called, & where it lieth, 130. a* 131. b*
21 Where a protection shall be allowed against the Queene, secus against the King, 131. a† 133 b†

¶ Protestation.

1 The description of a protestation, 124. b†
2 Where a protestation shall auaile the partie, albeit the issue bee found against him, & where not, 125. a ¶ 126. a ¶
3 Where the Tenant shall not bee compelled to atturne without entrie of his protestation & allowance of his priuileges, 320. b. vide tit. Per quæ seruitia, & quid Iuris clamat, vide tit. Pleading.

¶ Pudzeld quid, 233. a ¶

¶ Purchase.

1 The description and deriuation of purchase, 3. b* 18. a ¶ b†
2 what persons are of capacitie to purchase, & what not, & who to their owne vse, and who onely to the vse of other, 2. a b 3. a & b
3 what shall bee said a good name of purchase, and what not, 3. a
4 The seuerall conueyances of purchase, 10. a* vide tit. Estates, Fee, & Frechold.

5 Heirs female a good name to take by discent, not by purchase 164: a.

¶ Purpresture

1 The Etymologie and signification of the word, 277 b †.
2 How it differeth from intrusion, abatement, &c. vide tit. Abatement.

¶ Quare Impedit.

1 What remedie against an vsurpation and plenartie at the Common Law, & what at this day, 344. a ¶ b †. vide Stat. W. 2. cap. 5.
2 where plenartie was a good plea in a quare Impedit at the Common Law, & where not, vide tit. Plenartie.
3 where & why at the Common Law, a quare impedit lay of a Church in Wales in the Countie next adioyning 134. b†
4 Dammages at the Common Law not recouerable in a quare Impedit, 17. b* 344. b†*
5 Where a quare Imp. lay at the Common Law by a common person, & where not, 344. b*
6 Where and by what meanes a common person might remoue an Incumbent at the Common Law by a quar Imp. & where & by what not, 344. b*
7 Where an vsurpation by Collation shall not put the patron out of possession, secus of him that hath a right of Collation, 344. b*
8 Where the patron by presenting, as procurator for another, shall put himselfe out of possession, 52. a ¶
9 Where an vsurpation after iudgement, & before execution shall put the Recouror out of possession. 238. a †
10 Where vpon a grant of the three next auoidances, the vsurpation of the Grantor at the first auoydance, shall not put his Grantee out of possession, as to the other two, 249. a*
11 Where a presentation by one Ioyntenant shall serue for a title in a quare Impedit brought by the survivor, 186. a*
12 Where in a quare Imp. by two Tenants in Common the death of one shall not abate the writ, 198. a ¶
13 Where a quare Imp. lyeth of a Church donatiue, and the writ shall say, quod permittat ipsum præsentare, &c. 344. a †
14 Where in a quare Imp. brought within the six moneths, the Incumbent ought to be named, or otherwise he shall not bee remoued, 344. b*
15 Where the Clerke of the right ful patron being instituted pendente lite in a quare Imp. betweene the Bishop & a stranger, he shall not be remoued, secus of an vsurpation, 344. b ¶
16 Where the Bishop being named in a quare Imp. shall not present by laps pendente lite, ibid.
17 Where in such case time deuoluing to the Metropolitan, or the King, they shall collate, albeit they bee not named in the quare Imp. ibidem.
18 Where the Church of the wife become void during the couerture, the husband shall maintaine a quare Imp. in his owne name, 351. a ¶
19 Where the patron being outlawed, a stranger vsurpe, & six moneths passe, the recouerie of the King in a Q. Imped. shall bee a continuance of the Aduowson to the patron, 363. b*
20 Where Nonsuit in a quare Imp, shall be peremptory, vide tit. Nonsuit.
21 Conusance not grantable in a quare Imp. 134. b†
22 A release of actions reall or personall a good barre in a quare Imp. 285. a ¶ b†. vide tit. Release.

23 A protection not grantable in a quare Imp. 131. a †
24 Where boydance of the Church shall bee tried by the Common Law, & where by Certificate of the Ordinarie, vide tit. Penaltie.
vide tit. Presentation.

¶ Quarentena quid 5. b †

¶ Quarentine what, & where the wife shall haue her Quarenteine, & where not, 32. b * 34 b †

¶ Queene.

1 AN exempt person from the King, & where shee may grant & purchase, sue & bee sued without him, 3. a †. 133. a ¶
2 Her seuerall prerogatiues agreeing with those of the King, 133. a ¶ b †. 127. a †
3 Where she partaketh of the condition of common persons, 131. a †. 133. b †
4 Where the Queene, albeit shee bee an Alien, or Iew, shall be endowed, 31. b †

¶ Que estate.

1 In what things a prescription by a Que estate shall bee good, & in what not, 121. a † *
2 Where a man may plead a Que estate of a thing that lieth in grant, and where not, 121 a *
3 By what, & of what estate such plea shall bee good, and by whom, & of what not, 121. a ¶
4 In what person a Que estate ought to bee alleaged, & in what not, 121. b †

¶ Quid Iuris clamat.

1 WHere the particular Tenant shall bee compelled to atturne in a Quid Iuris clamat vpon grant of the reuersion, & where not, 318. a ¶
2 Where the Lessee shall not bee compelled to atturne in a Quid Iuris, &c. vntill allowance of his priuileges, 320. b †
3 Where in a Quid Iuris clamat, by Baron and Feme, the priuileges of the Lessee shall be entred of record notwithstanding the Couerture, secus in case of an Infant, 320. b *
4 Tenant in Taile not compellable to atturne in a quid Iuris clamat, secus in a Per quæ seruitia, or quem reddit reddit, 316. b †
5 Where an Infant shall be compelled to atturne in a quid Iuris clamat, vide tit. Infant.
6 Where one Parcener grant her estate in a reuersion by Fine, the Conusee shall haue a quid Iuris clamat for a moytie, 310. b †
7 Where the reuersion of a Rent charge vpon a Grant for life is granted ouer, a quid Iuris clamat lieth against the Grantee for life, and not against the Ter-tenant, 311. b ¶
8 Where the Nonsuit of one Plaintiffe in a quid Iuris clamat shall bee the Nonsuit of both, 139. a ¶
vide at large in tit. Atturnment, & Per quæ seruitia.

¶ Quod ei deforceat.

1 WHere & against whom such Writ lieth, 331. b * 354 b ¶. vide Stat. W. 2. cap. 4.
2 The forme of the writ, 355. a †
3 Where vpon a recouerie by default in an action of waste, a quod ei deforceat lieth, 355. a & b
4 Where it lieth vpon a recouery by default in an Assise, 355. b *
5 Where notwithstanding bein the reuersion is receiued vpon the default of Tenant for life, and a verdict found against him, a quod ei deforceat lyeth by the Tenant, 355. b *
6 Where it lieth vpon a recouerie against Baron & Feme, albeit the Statute W. 2. saith, against Tenant in Dower, or for life, 356. a †
7 Where it lieth not by the wife vpon such recouerie after the death of the husband, 356. a *

¶ RAdmans & Radchemistres qui 5 b * 86. a †

¶ Ransome what, & whence deriued, 127. a *
vide tit. Fines.

¶ Rape.

1 THe signification of the word, 123. b ¶
2 What offence accounted in antient time, & how punished, & what at this day, ibid.

¶ Rationabili parte bonorum.

WHere & by whom such writ lieth, and where and by whom not, 176. b ¶
Reasonable Time, Fines, Customs seruices, by what triable

¶ Rauishment of Ward.

1 WHere and by whom it lieth, 98. b *
2 The forme of such writ, vide Stat. W. 2. cap. 35.
3 Where it lieth against the Soueraigne of a house of Religion, for admitting the heire to bee there professed, 137. a †
vide tit. Mariage & Wardship.

¶ Rebutter.

1 THe signification and deriuation of the word, 303. b ¶ 365. a *
2 Where an Assignee shall Rebutt by reason of a warrantie in Law, & where not, 384. b †
3 Where a Disseisor, &c. or other Tenant not priuie in estate, or to the Deed, shall Rebut, and where not, 385 a * ¶.
vide at large in tit. Voucher, & Warrantie.

¶ Recluse.

1 THe signification & deriuation of the word, 258. b *
2 Where the entry of a person recluse shall bee tolled by a Diseent without claime, ibid. vide tit. Entry Congeable.
3 Where such person shall appeare by Atturney, where others must in proper person, 258. b *

¶ Record.

1 REcord what & whence deriued, 117. b ¶ 260. a †
2 How triable, 117. b ¶ 260. a †
3 Which are Courts of Record, and which not, vide tit. Court.
4 When a Record is alterable, & when not, 260. a *
5 Nul tiel Record no plea against the Kings Letters Patents, ibid.
6 Outlawrie no prejudice vntill it bee of Record, 128. b † 288. b *
7 Where in a plea of Outlawrie the Defendant ought presently to shew the Record, & where he shall haue a day ouer, vid. tit. Outlawrie.

¶ Recouerie.

¶ Recovery.

1 The Etymologie & ſignification of the word, 154. a ¶
2 What remedy at the Common Law he in the remainder or reverſion had upon a feined recovery ſuffered by tenant for life, and what at this day, vide Stat. W. 2. cap. 3, 14. Eliz. cap. 8. Vide tit. Forfeiture.
3 Where upon a recovery againſt tenant in taile execution may be ſued againſt his iſſue, and where not, 361. b ¶
4 Where a recovery by default againſt one out of the realme in the Kings ſervice ſhall not be avoided by error, 260. b *
5 What perſons might falſifie a recovery at the common Law, & what at this day, vide tit. Falſifying of Recoveries.
6 Where a recoveror by feined title ſhal diſtraine and avow upon tenants for life or yeares, vide ſtat. 21. H. 8. cap. 15.
7 Where the recoveror ſhal have waſte or diſtraine for a rent, for which the recoveree could not, and where not, vide ibidem.
8 Where after recovery the demandant may enter, and diſtraine before execution, and where not, vide tit. Execution.
9 Where the feme or iſſue in taile ſhal be remitted againſt a recovery ſuffered by the husband or tenant in taile, & where not, Vide tit. Remitter.

¶ Recovery in value,

1 Where the heire at the common law & the ſpeciall heire joyne in deraigning a warrant paramount, to whō the recompence in value ſhal enure, vide tit. Voucher.
2 Where a recovery being had againſt tenant in taile, and his wife which had nothing, upon a recovery over the recompence ſhall enure to the husband onely, 376. b ¶
3 Where there ſhal be two recoveries in value upon one warranty, & where not, vide tit. Warranty & Voucher.
4 Where upon a warranty for life the recovery in value ſhal be in fee, & where but for life, vide ibid.
5 Where lands by purchaſe ſhal be liable to execution in value in caſe of a warranty by diſcent, and where not, 102. a ¶
6 Where the lands which the vouchee had at the time of the voucher, or warrant in Charta brought ſhal be liable to execution in value, notwithſtanding alienation before iudgement, 102. a ¶
7 Where upon a recovery in value by tenant in taile, after his death without iſſue, execution ſhall be ſued by him in the reverſion, vide tit. Execution.

Vide tit, Voucher & Warranty.

¶ Diſſeiſin.

1 Where it lieth not upon a recovery in a writ of right close in nature of an Aſſiſe in ancient demeſne, or in an Aſſiſe of freehforce by bill, 154. a ¶
2 Where it lieth againſt one diſſeiſor above, albeit the recovery in the Aſſiſe was againſt two, ſecus where one diſſeiſor a ſtranger rediſſeiſe the plaintife, 154. b †
3 Where it lyeth not againſt the husband & wife upon a recovery in Aſſiſe againſt the wife, but where the wife was Plaintife in the Aſſiſe, ſhe & her husband may tollet the rediſſeiſin, ibid.
4 Where two ſeveral rediſſeiſins may lie upon one recovery in an Aſſiſe, 154. b †
5 Where it lyeth againſt the diſſeiſor and his feoffee after the ſecond diſſeiſin, 154 b †
6 Where it lyeth not againſt the tenant in the firſt Aſſiſe being no diſſeiſor, albeit he diſſeiſeth the plaintife after 154. b *
7 Where it lieth upon a rediſſeiſin of parcell of the tenements formerly recovered, ibid
8 Where it lyeth of a rent ſeeke by ſurplusage formerly recovered by the meſne as a rent ſervice, 154. b *
9 Where it lieth by tenant in taile after poſſibility, &c. upon a recovery by him being tenant in ſpeciall taile, ibidem.
10 Where it lyeth upon a rediſſeiſin of a common after a recovery of the land out of which, &c. 154. b *

¶ Relation.

1 HOw the word (Prædict.) in grants ſhal have relation, 20. b †
2 How the word (Eadem) ſhal haue relation where two things are mentioned before, ibid.
3 The relation & force of the word (inde) 82. b * 203. a *
4 How the words from henceforth à die confectionis &c. ſhal have relation. vide tit. Leaſes.
5 How the words (proxima advocatio) ſhal have relation, Vid. tit. Grants.
6 Where a feoffment relating to the eſtate of another, ſhall paſſe a fee ſimple without the word (Heires) 9. b ¶
7 How & to what time a Condition broken ſhal have relation, vide tit. Conditions.
8 To what purpoſes an Attornment ſhal have relation, vide tit. Attornments & tit. Alien.
9 To what purpoſes a bargaine & ſale after inrolment ſhal relate to the delibery of the deed, & to what not, vide tit. Bargaine & Sale.
10 Where & to what intents an Eſcheat or Forfeiture ſhall relate to the time of the felony committed, & where & to what not. 13. a ¶ 390. b * vide tit. Felony.
11 Where a Relation ſhal not worke a wrong or charge to a third perſon, 150. a *
12 Where the relation of an eſtate gained by wrong ſhal not defeat an eſtate ſubſequent gained by right, 277. b ¶ vide tit. Releaſes.

Regiſter, & its antiquity, 16. b ¶ 73. b ¶ 159. a †

¶ Releaſes.

1 THe forme of a Releaſe, 264 b †
2 The ſeverall ſorts of Releaſes. 264. a ¶ b *
3 The proper words of Releaſes, & what words ſhal be ſaid to amount to a releaſe, & what not, 264. b * 302. a * vide tit. Grants.
4 What act by him that right hath ſhal be ſaid a releaſe in Law of his right or action, & what not, & how it differeth from a releaſe in deed, 264. b * ¶
5 How many ſeverall waies a releaſe may enure, 193. b * 273. b ¶
6 Where a releaſe of a right to one that hath neither freehold in deed or in law ſhal be good, and where not, 265. b ¶ 266. a † b ¶ 267. a † 284. a ¶ b † *
7 Where a releaſe of an annuity to the Patron in time of vacation ſhall be good, ſecus to the Ordinary. 266. a †
8 Where priority ſhal be requiſite to the releaſe of a right, & where not, 266. a † 268. a * 275. a †
9 Where and by what meanes a diſſeiſee may releaſe his right for life only, & where, and by what not, 264. b ¶
10 Where by a releaſe of all right in the land a power or authority ſhal be determined, & where not, 265. b †
11 Where ſuch releaſe ſhal not extinct a future right or poſſibility, 264. a † b *
12 Where a releaſe of dower to him in the reverſion upon an eſtate for life ſhall be good, 264. a *

13 Where a release to the tenant for life shall enure to him in the reuersion or remainder, & è conuersò; & where not, 267. b per tot. pag. 275. a ¶ b †*. 279. b † 285. b ¶. 297. b ¶

14 Where & to what purposes a release to him that hath but a bare right shall be good & auaileable, & where & to what not, 267. a ¶ 268. a †* b ¶ 269. a *

15 How many waies a seigniory rent or right may be released, 268. a *

16 Where a release to him that hath no estate or right shall bee good, 265. b ¶ 268. a * 269. a †

17 Where a disseisor make a lease to one & his heires pur auter vy, a release by the disseisee to the heire after the death of the lessee before entry shal extinct his right 275. a *

18 Where a release to one disseisor shall enure to his companion, and where not, 194. a * ¶ 275. b ¶ 276. a per tot pag. 378 a *

19 Where a release by the patron to one vsurper shall enure to both, 194. a * 276 a *

20 Where a release to one feoffee of the disseisor shall enure to both, 194. b * 276. a ¶ 277. a †

21 Where a release to one trespassor shall bee auaileable to his companion, 232 a †* vide in the Preface to the Inst. fol. 4 a †

22 Where a release to the Executors shal be a good barre in an action against the heire, 232. a *

23 Where & to what purposes after a feoffement in fee by the tenant the release of the Lord shall be good to the feoffor, & where, & to what not, 269. a ¶ b *

24 Where such feoffor shall take aduantage of a release by the Lord to the feoffee, but not è conuersò, 269. b *

25 Where a release to the assignee of tenant for life shall bee a good plea in an action against the tenant for waste done before the assignment, 269 b *

26 To what purposes a release to a lessee for years before entry, or to him that hath a future interest shall bee good, & to what not, 46. b † 270. a * ¶

27 Where a release to one in reuersion or remainder for years shall bee good to enlarge his estate. 270. a *

28 Where the release by one ioynt lessee for yeares to his companion shall be good before entry, 270. b †

29 Two grantees of the next auoidance a release by the one to the other before the Church voides, good, secus after, 270. b †

30 Where a release to a tenant at will shall bee good to enlarge his estate, secus to a tenant at sufferance, 270. b * ¶ 271. a †

31 Where vpon a feoffment in trust the feoffor occupy and take the profits, a release to him by the feoffees shall be good, 271. a ¶ b 272. a b †

32 What shall bee said a sufficient priuity whereupon a release may enure by way of enlargement of the estate, & what not, 272. b ¶ 273. a per tot. pag.

33 In what release words of limitation are requisite to the passing of an inheritance, and in what not, 273. b †* 274. a ¶ b ¶ 275. a † 280. a *

34 Where a feme couert is tenant for life a release to the husband and his heires shall bee good, 273. b * 299. a ¶

35 Where a release to tenant by statute Merchant, &c. or Gardein, which hold ouer for the value shall bee good to enlarge their estates, 273. b *

36 Lessee for ten years, the remainder for twenty years, by the release of him in the remainder to the lessee he shall haue for thirty yeares, 273. b *

37 What priuity requisite to a release which enure by way of mitter lestate, 273. b ¶

38 Where and to what purposes the release of one Ioyntenant to his companion shall enure by way of mitter lestate, & where, & to what not, 273. b ¶

39 Where the release of one coparcener of a rent shall enure to the other by way of mitter lestate, albeit her moity be in suspence, Et sic è conuersò, 273. b ¶

40 Where one Coparcener of a rent marry the ter-tenant, & the other release to the husband & wife, how it shall enure, quære. ibid.

41 Where a release of a right vpon condition shall bee good, secus of a condition vpon condition, 274. b †. vide tit. Conditions.

42 Where lessee for yeares is ousted, and he in the reuersion disseised by the release of the lessee to the disseisor, the disseisee may enter, secus in case of a lease for life, 275. b ¶ 276 a †

43 Where a release by one whose entry is lawfull to him that is in by wrong shall purge & take away all mean estates and titles, secus where his entry is not lawfull, 266 b †* 277. a †* b ¶ 278. a †

44 Where a release to the feoffee of lessee for life of the disseisor shall exclude the disseisor of his entry, 276 b ¶

45 Where a release to one feoffee of such lessee shall barre the disseisor as to both, 277. a †

46 Where the feoffee of a disseisor vpon condition make a feoffment ouer, a release by the disseisee to the second feoffee shall extinct the condition, secus of a release to the first feoffee, 277. b *

47 Where the release of the disseisee to a disseisor to the vse of another shal take away the agreement of Cestuy que vse, 277. b ¶. vide tit. Relation.

48 Where two disseisors release to their disseisor, and after disseise him, the release of the disseisee to one or both of them shall not exclude the second disseisor to re-enter, 278. a *

49 To what purposes the release of the disseisee to one disseisor shall be said to enure by way of entry and feoffment, & to what not, 194 b †. 278. a ¶ b †

50 Where acts done to or by the disseisor shal not be auoided by the alteration of his estate, by the release of the disseisee, 278. a †* b †

51 Where an alien Disseisor is endenized by the Release of the disseisee to him the King shall not haue the land, secus if hee were the feoffee of a disseisor, 278. b †

52 Where the Lord disseise his tenant & is disseised, the release of the tenant to the second disseisor shal not reuiue the seigniory, secus if the Lord & a stranger had disseised the tenant, & the disseisee released to the stranger 278. b *

53 Where a release shall be said to enure totally by way of extinguishment, & where onely as to some purposes, 279 b * ¶. 280. a † 313. b *

54 Where a release to one Ioyntenant shall enure to his companion, & where not, 194. a b *

55 Where a Release by one Ioyntenant or Parcener to his companion shall bee good, and where not, and how such release shall enure, 193. a ¶ b. per tot pag. 318. a †

56 Where the feme meine and the tenant entermary, & the Lord paramount release to the husband and wife, how it shall enure, quære. 208. a *

57 Where a Release which enures by way of Extinguishment may admit of a limitation, and where not, 280. a *

58 Where by the release of the Lord to his tenant of all his right in the land, the seigniory shall be extinct without

out words of inheritance. 280. a. *

59 Where one release shall enure to extinguish severall rights in one and the same land. 280. a. *

60 Where the release of the Lord of all his right to the tenant, & a lease for yeares of the seigniory shall extinguish the seigniory and state of the lessee also, secus of a release to them and their heires. 280. a *

61 Where a rent may be reserued vpon a release, and where not. vide tit. Reseruation.

62 Where by a release of all actions causes of actions shall be released. vide tit. Action.

63 Where in mixt actions a release of all actions reall or personall shall be a good barre. 285. a. †. ¶ b. †. *

64 Where in an Assise by three Ioyntenants a release of actions personall by one to the disseisor shal not barre his companions. 285. a. ¶

65 Where in a writ of ward by two, a release by one to the defendant shall enure to the benefit of his companion for the whole. 285. a. ¶

66 Where a release of actions personal shall bee a good barre in actions real where damages are to be recouered, and where not, 285. a. †. ¶. b. †

67 Where a release of al actions to the disseisor or his tenant for life shall not extend to his feoffee, or him in the remainder. 275. b * 285. b. ¶ 286. a. ¶

68 Where such release shall not preiudice the heire of the disseisee of his action after the death of his Ancestor. 285. b. ¶

69 Where a release of actions reals shal be auaileable onely to the tenant. 285. b. * 286. a. †

70 Where a release of all actions shal barre a right, & where not, but the party notwithstanding may enter or seise. 286 a. * ¶. b. †. *

71 Where a release of actions reall before the Statute of Ries was a good plea by the pernor of the profits. 287. a. †

72 Where a release of all actions, appeales, or demands, shal be a good barre in an appeale of death, secus of a release of al actions reall and personall. 287. b. †. ¶ 288. a †. * 291 b. †. *

73 Where a release of actions personal shal bee a good barre in an appeale of Mayhem. 288. a. ¶

74 Where a release of al actions shal be a good plea in a writ of error or attaint, & wherenot. 288. b. ¶ 289. a. †

75 What shal be said a good release to barre an execution, & what not. vide tit. Execution.

76 By a release of demands what things are released. 291. a. 292. a. † 392. b. ¶

77 Where by a release of quarrels al actions and causes of action are released. 292 a. *

78 Where a release of all actions shall discharge an Obligation before it bee broken, secus of a Couenant. 292. b. †. *

79 Where by a release of all actions a rent at a day after or an annuity not behind is not released. 292. b. * ¶

80 A release by the Lord paramount to the tenant to hold by lesser services, void. Vide tit. Confirmation.

81 Where hee in the remainder in taile release to the tenant for life in possession all his right what shal passe. 345. b. ¶. Vide tit. Waste.

¶ Reliefe.

1 RElicfe what, and whence derined. 76. a. * 83. a. ¶ b. †

2 What the relicfe of a Knight and each Nobleman was by the common law, & what now by the statute. 76. a. *. ¶ 89. b. † 83. b. † vide stat. Mag. Chart. cap 2.

3 The relicfe of the Tenant which holdeth by the entiefe of a Knight, moity or third part. 83. a. ¶ b. † 166 a. ¶

4 The remedy which the Lord hath for his relicfe, and where an action of debt lieth for relicfe, & where not. 83 a ¶ Vide tit. Debt.

5 Where the Lord by Knights seruice shall haue both wardship and relicfe of the same heire, and where hether. 83. b. ¶

6 where the heire within age shal pay relicfe, & where not ibid.

7 where the successor of an Abbot or Bishop shal pay relicfe, and where not. 84 a † 99. a. †

8 where the Lord shal haue relicfe of the heire enfeoffed by collusion 84. a †

9 The relicfe of a tenant in Socage 90 b ¶ 91. a †

10 where the rent is ten shillings, or a paire of spurres, what relicfe shal bee payed, and who shal haue the election. 90 b ¶ 91. b †

11 where the rent is not annuall what relicfe shall be paid. 91. a †

12 At what time the relicfe of such tenant shal be due to the Lord, and where the Lord shal not destraine til a certaine time 91. a ¶ 92. a †

13 Where the heyre of Cestuy que vie shall pay relicfe. 91 a *

14 Of what seruice a relicfe shal be due and of what not. 91 b ¶ 93. a *

15 The relicfe of the tenant by grand Serieanty. Vide tit. Serieanty.

¶ Remainder.

1 REmainder what, and whence derined. 49. a ¶ 143. a *

2 where it shal passe without deed 49 a ¶ 143. a †

3 where a remainder may depend without a particular estate. 298. a *

4 where the defeating of the particular estate shall defeat the remainder, and where not. 298. a *

5 A rent granted to the ter-tenant for life the remainder in fee, a good remainder, 298. a *

6 where a rent is granted pur auter vy, the remainder in taile to Cestuy que vy, a good remainder 298. a * vide tit. Instant.

7 where by the grant of a remainder a reuersion shal passe, 299. b *

8 Where a remitter to the particular estate shall bee a Remitter to the reuersion or remainder. Vide tit. Remitter

9 where the execution of the particular estate vpon a fine sur grant & render shal be an execution of the remainder. 353. b *

10 where a remainder not vesting at the time of the particular estate created by liuery, shal be good, and where not, 264 a † 377. b * 378. a

11 where a meane remainder or reuersion shal be an impertinent to bring an action of waste, and where not, vide tit. Waste.

12 where a remainder limited vpon a gift in Frankmarriage shall destroy the frankmar. and where not, 21. b *

13 where a remainder is limited to the right heires of the particular tenant, it shall be said to vest in him presently, and where not. vide tit. Heire.

14 where a remainder for yeares vpon an estate for life shal be good to the same party 54. b ¶

15 By what meanes a remainder vested in the King shall bee deuested. Vide tit. Entry Congeable, Prærog. & Remitter.

16 Where a releale to the particular tenant shal enure to him in the remainder, & è contrà, and where not, vide tit. Releases.

Vide tit. Reversion.

¶ Remitter.

1 The Etymology and description of a Remitter. 347.b *

2 The incidents to a Remitter, 348.a †

3 Where a remitter shal operate vpon a freehold in Law descended before entry, 348. a ¶

4 Where tenant in taile disseise his discontinuée, his issue shal be remitted notwithstanding the infancy or couerture of the discontinuée, 348 a ¶

5 Where tenant in taile infeoffe his issue within age, he is remitted, secus of a vse limited to him upon a feoffment, 348. b † * 350 b † 351.b ¶

6 What charges by the issue shal be auoided by a remitter, and what not, 349.a * vide tit. Charge.

7 Where a remitter to the principal shal be a remitter to the accessary. v. tit. Appendant.

8 Where a remitter shal not be to the appendant before re-continuance of the principal, vide ibid.

9 Where an Vsurpation shal worke a remitter, 194. a *

10 Where the issue in taile within age enter, or entermary with the discontinuée, he is remitted, secus if of ful age, 202.b † 350 b * ¶

11 Where a right without an action, or an action without a right shall worke no remitter, 348. a † * 349. b † 356. a †

12 Where tenant in taile suffer an erroneous recouery, and disseise the recouerer, and dye, his issue is not remitted, 349.b *

13 Where a stranger usurpe upon a purchasor of an aduowson, and grant to him in fee, who dye, his issue is not remitted, 349.b *

14 Where a moity of the lands discontinued descending vpon the issue in taile shal be a remitter only for the same moity, 350.a † *

15 Where tenant in taile enfeoffe his issue within age, and a stranger, no remitter to the issue, but for a moity, 350.a ¶

16 Where the husband discontinue, & retake to himselfe and his wife during his life, the feme is remitted, 350. b ¶ 351.b * ¶

17 Where an infant or feme couert shal be remitted against their deed indented, or acceptance by fine, 353.a * vid. tit. Fines.

18 Where upon a discontinuance by the husband by fine a grant and render to the wife shall bee a remitter to her, albeit she bee no party to the writ, or Conusans. 353. a ¶

19 Where baron and feme Tenants in special taile leuie a fine at the Common Law, and retake in fee, the feme is not remitted, but her issue upon the discent shall. 353. a *

20 Where the issue in taile of full age take husband, a lease to her and her husband by the discontinuée shal be a remitter, 353.b ¶ vide tit. Entry Congeable. in case of a discent otherwise.

21 Where a man shall be remitted against his owne discontinuance and repriseI. 354.a † *

22 Where a remitter to the particular estate shal be a remitter to all in the reuersion or remainder, 354.b † *

23 Where a remitter to the particular estate shall bee a remitter to the reuersion notwithstanding a meane Remainder bee barred during the discontinuance, 354.b *

24 Where a remitter to the particular estate shall deuest a remainder or reuersion setled in the King during the discontinuance, ibid.

25 Where after a recouery by default against a feme a lease to her and her husband shal be a remitter to the feme. 355.a † 356 a †

26 Where the discontinuée of the husband enfeoffe the husband and wife, and a stranger, the wife is remitted to a moity, 356.b †

27 Where the discontinuée of the husbād make a lease to the wife, the disagreement of the husband shal not ouste the feme of her remitter. 356.b ¶ 357.a †

28 Where the wife being remitted during the couerture may after the death of her husband waiue her remitter, and where not, 357.a †

29 Where tenant in taile to him and his heires females discontinue, and retake in fee. and dye, hauing a daughter, the sonne borne after shal not deuest the remitter, 357.a *

30 Where couin in the husband and wife to disseise the discontinuée, and enfeoffe them, shal hinder the remitter to the wife, 357.a ¶

31 Where tenant in taile and his issue disseise the discontinuée to the vse of the father who dye, the issue is not remitted against the discontinuée, albeit he be against all others, 357.b †

32 Where one ioyntenant is of couin to disseise the heire of their disseisor and enfeoffe them, the other being not priuy to the couin is remitted for his part, 357.b *

33 Where the Husband discontinue and retake for life the remainder to his wife, by the death of the husband the wife is remitted before entry, and cannot waiue, 358. a * b *

34 Where a freehold in Law accruing to the issue in taile or disseisee by survivorship, or by reason of a remainder shal worke a remitter, and where not, 358. b ¶ 359. a & b †

35 Where an Abbot or Bishop discontinue, and retake in fee by licence, the successor shal be remitted and defeat the meane charges, 360. a * ¶ b †

36 Where a remitter shal be wrought by a matter in pais albeit the discontinuance groweth by matter of record, 355. a † 356. a ¶ 361. b † *

37 Where in a Formedon or writ of entry the tenant plead non tenure or disclaime by the entry of the issue in taile or disseisee, they are remitted before iudgement. 362. a ¶ 363. a ¶

38 Where a claime in pais shal not hinder a Remitter, secus of an Indenture, or a claime of record, 363. b ¶ 364. a ¶

39 Where a man of full age hauing a right of entry take an estate he is remitted, secus of a right of action, 363. b. † 364. a † *

40 Where a remitter to one ioyntenant shal be a remitter to his companion, and where not, 364. b * vide tit. Entry Congeable & Ioyntenants.

41 Where a suspended warranty and assets discending upon the issue in taile shall hinder a remitter, vide tit. Warranty.

¶ Rents.

1 The deriuation of the word, 141 b ¶

2 The diuision of Rents, ibid.

3 Rent seruice, what, 87.b † 141.b ¶ 142.b †

4 Such rent distrainable of common right, 142.a † b †

5 How such rent may become secke, 150. a ¶ b † ¶ 151. a †

To

6 To what purposes such rent become secke shal be said to participate of the nature of a rent seruice, and to what not, 150.b * 155.a † * 154. b * 309.b ¶

7 Out of what things a rent may be granted or reserued, and out of what not, 47.a † 142.a * 144.a * ¶

8 Where a rent seruice may be suspended in part & in Esse for part, and where not vide tit. Suspension.

9 Where by purchase or discent of parcel of the tenancy to the Lord an entire rent seruice shal be extinct, & where not. vide tit. Extinguishment.

10 What things incident to a rent seruice vid. tit. Fealty. & tit. Appendant.

11 Where a tenure being by homage, fealty, and rent by a recovery or grant of the rent the homage and fealty shal passe, and where not. 151.a *

12 Rent charge, what. 143.b * 144.a *

13 Where a grant to distraine shall amount to a rent charge. 146 b ¶ 148.a † 308.a ¶ b ¶

14 Where words in a grant shal amount to a rentcharge, albeit there bee no expresse words of charge or distresse. 147. a †

15 Where in the grant of a rent a proviso not to charge the person of the grantor shal be good, and where not. 146.a per tot. pag.

16 Where in such a grant a proviso not to charge the land shal be void. 146.a ¶

17 Where the person of the grantor shal be charged with a rentcharge, notwithstanding a proviso to discharge his person. 146.b †

18 What act shal be sufficient to determine the election of the grantée of a rent charge to make it a rent or an annuity, and what not, vide tit. Annuity. 9

19 Where the determination of the rent charge shall bee a determination of the annuity, and where not. Vide ibid.

20 Rent secke, what, and whence so called 143.b ¶ 144.a ¶

21 Where a rent is granted out of one Mano^r with a clause of distresse in another what rent it shall be, and how construed. 147. a per tot. pag.

22 Where a rent is granted out of two acres, with a clause of distresse in one, or tot two persons with a distresse to one, what rent it shall be construed. 147. b †

23 Where the same rent may be both charge and secke diversis temporibus. 147. b †

24 Where a rent in fée is granted out of lands in fée and a terme for yeares, or solely out of a terme for yeares, how it shal be construed. ibid.

25 Where a man seised of twenty acres grant a rent of 20. s. percipiend. de qualibet acra, how it shal be construed. 147. b * 267. b * vide tit. Grants.

26 Where the bargainor and bargainée ioyne in the grant of a rent how it shal be construed before, and how after inrolment. 147. b * vide tit. Confirmation.

27 Where a rent granted for owelty of partition shal be good without deed, secus of a rent for owelty of Exchange. 169. a ¶

28 Where a man may haue a rent by prescription 144. a ¶

29 What shal be said a sufficient seisin of a rent secke to haue an Assise, and what not, vide tit. Seisin.

30 What real actions lye for the recouery of a rent charge or secke after seisin, 160. a ¶

31 What shall be said a disseisin of a rent seruice, charge, or secke, and what not. vide tit. Disseisin.

32 Where mony giuen in seisin of a rent before the day shal not be abated out of the rent. 315. a †

33 Where a rent secke may be part of a Mano^r, secus of a rent charge. vide tit. Manor.

34 By what meanes a rent may be discontinued, & by what not, vide tit. Discontinuance.

For apportionment of rents, vide tit. Apportionment. Vide it. 32. H. 8. cap. 37. which giueth remedy for recouerie of arrerages of rents where the Common Law was deficient.

Vide tit. Reseruation.

¶ Replevin.

1 The Etymologie of the word (Replevin) 145. b † 161. a *

2 Where such writ lyeth, ibid.

3 How many wayes goods may be repleuied, 145. b †

4 Where a Replevin brought by him that had no property in the goods at the time of the taking shal be good, and where not, 145. b †

5 Where a man may haue a replevin of goods not distrained, 145. b *

6 The seuerall pledges the Sheriffe ought to take in a replevin, 145. b †

7 Where a Replevin lyeth notwithstanding a grant to keep the goods distrained against gages and pledges, 145. b ¶

8 Where a replevin lyeth notwithstanding the property once tryed and found for the defendant. 145. b *

9 Where the beasts of seuerall men are taken they shall not ioyne in a Replevin. 145. b ¶

10 In a Replevin property to the Plaintife & a stranger, or where there be two Plaintifes property to one of them a good plea, ibid.

Vide stat. Marlebridge cap. 22.

Report, what, and whence derived, 293. a ¶

¶ Request.

1 What shal be a sufficient request by the wife to entitle her to damages in a writ of Dower, and what not. 32. b ¶ vide tit. Dower.

2 Where an estate is to be made vpon request by force of a condition, by whom, when, and where such request ought to be made, 210. a * ¶ vide tit. Conditions.

Vide tit. Demand.

¶ Reseit.

1 The Etymology and signification of the word, 192. b * 352. b ¶

2 Where lesse for yeares, tenant by stat. merchant, &c. shall bee receiued in default of him in the reuersion or remainder to saue their terme, and where not. Vide stat. Gloc. cap. 11.

3 Where in default of the husband the wife shal be receiued to defend her right, vide stat. W. 2. cap. 3.

4 Where a feme being receiued shal plead, and aduantage shall be taken against her as a feme sole, & where not. 358. a †

5 Where in an action of waste against the husband & wife, vpon the default of the husband the wife shall be receiued. 355. a ¶ b †

6 Where he in the reuersion shall be receiued vpon the default of tenant for life, albeit the statute speaketh of a remainder, 356. a * vide stat. W. 2. cap 3.

¶ Rescous.

1 The description and dertuation of Rescous. 160. b †

2 Where the Cattell distrained go into the house of the owner, the not deliuery of them shal be esteemed in Law a Rescous. 161. a †

3 Where the owner may make Rescous of a distresse taken

ken without cause, and where not. 47. b† 160. b ¶ 161. a† *
4 Where Rescous shal be a disseisin of a rent seruice, and where not, 160. b ¶ 161. a ¶
5 Where the Lord distraine his Tenant in the high way within his fee, the tenant may make Rescous. 161. a†
6 Where the Tenant may make Rescous upon a distresse of the Lord taken out of his fee, and where not, 161. a† *
7 Where the party not guilty may make Rescous upon an arrest of the Sheriffe for felony, and where not. 161. a *

¶ Reservation.

1 The deriuation of the word, 142 b ¶
2 What shal be said good words of Reseruation. 47. a† 144. a†
3 The difference betweene an exception and a reseruation, 47. a *.
4 Out of what things a rent may be reserued, and out of what not, vide tit. Rents.
5 To what person the Reseruation ought to be made, and where it shal be good to a stranger to the land, & where not. 47. a * 143. b ¶ 213. a & b
6 Where a Reseruation to his heires without any thing to the party himselfe shal be good, and where not. 99. b† 213. b† ¶ 214. a†
7 Reseruation to a man or his heires how it shal be construed, 214. a†
8 Where a rent reserued to one Ioyntenant shal be good also to his companion, and where not, 47. a * 192. a * 214, a† * 318. a * vide tit. Ioyntenants.
9 Where a Rent is reserued generally to what persons it shall extend, 47. a *
10 Where the special reseruation of the party shal destroy the general intendment of the Law, 23. a * 47. a * 305. b ¶
11 What things the Lord may reserue for rent, & what not, 91. b * ¶ 142. a *
12 Upon what estate a rent seruice may be reserued at this day, and upon what not, 241. b 143. a
13 Where a rent reserued upon a bargaine and sale shal be good, 144. a *
14 Where a rent may be reserued upon a release, and where not, 193. b ¶
15 Where a reseruation shal amount to a grant, and where not, 170 a† 143. b† 144. a† vide tit. Annuity.
16 Where tenant for life and he in the reuersion ioyne in a lease for life reseruing a rent, how it shall enure. 214. a *
17 Where the Lord release to his tenant by fealty and rent sauing or reseruing to him his rent, what rent it shall be construed, 150. a ¶
18 Reseruation at Michaelmas and our Lady day vpon a lease made in Februarie, shal be construed at our Lady day and Mich. 217. b.†
19 Reseruation of a new seruice vpon a confirmation or release to the tenant, void. vide tit. Confirmation.
20 Where an entry for condition broken cannot be reserued to a stranger, 214. b ¶ vide tit. Conditions.
Vide tit. Rents.

¶ Resummons.

1 The nature of such writ, and where it lieth, 135, b†
2 The seuerall kindes of resummons, ibidem.
3 Where after iudgement that the tenant shal go without day, the plaintife may recontinue the cause by a resummons or reattachment, and where not, 135. b† 363. a†

¶ Retraxit.

1 A Retraxit what, and how it differeth from a Nonsuit and Departure, 138, b ¶ 139. a†
2 The seuerall sorts of Retraxit, and the forme of entring them, 139. a†

¶ Reve.

1 The signification and deriuation of the word, 61. b ¶
2 The office and duty of a Reue, 62. a†

¶ Reversion.

1 The Etymologie of the word, 142. b *
2 The description of a reuersion. 22. b†
3 What things incident to a Reuersion, and shal passe by grant of the reuersion, vide tit. Appendant.
4 Where an vse after diuers particular estates is limited to the right heires of the feoffor, it shal be said in him as a reuersion, 22 b *
5 Where a man make a gift in taile or lease for life the remainder to his right heires it shall bee in him as a reuersion, 22. b ¶
6 Where a feoffement is made to the vse of the feoffor in taile, and after to the feoffee in fee, the feoffee hath no reuersion, ibidem.
7 What reuersion shall be accounted assets, and what not, 173. a†
8 Where a reuersion upon an estate taile shall be a sufficient continuance of priuity between parceners to take aduantage of a warranty or condition in law, 174. b† Vide tit. Remainder.

¶ Reviver. vide tit. Extinguishment.

¶ Revocation.

1 Where a condition or power to reuoke vses shal be good, and what reuocation shall be good, and what not, vide tit. Vses.
2 By what acts a power to reuoke uses shall be extinct & defeated and by what not, 237. a * 265. b†
3 Where a power of reuocation may bee apportioned, and where not, 237. a *
4 Where the King may reuoke his presentation before induction, vide tit. Prærog.

¶ Right.

1 The signification, and extent of the word (Right) 158. b ¶ 265. a† 345. a ¶ b†
2 The seuerall kinds of right. 266. a * 345. b†
3 Common right what, and how taken, 142. a ¶
4 Where the Law more respecteth a lesse estate by right than a greater by wrong, 42. b†
5 A right cannot dye, 279. b† vide tit. Releases.
6 The seuerall natures of writs of right. 158. b ¶
7 Where in such writ the Demandant ought to alledge seisin within time of limitation, secus in case of the King, 294. a† b†
8 The seuerall times of limitation in a writ of right.

114.b ¶ 115.a†
9 By what meanes a future right may be barred, and by what not.265.a ¶ b.†
10 Where a right shall remaine, notwithstanding a release of actions. vide tit. Releases.
11 Where a recontinuance of a right of possession out of the hands of him that hath the absolute right shall draw with it the mere right to the land, and where not.266. a * ¶ 278.b ¶ 279.a † * 283.b * ¶
12 Where in a writ of right the mere right shall be preferred before the right of possession, 279.a † b † 283. b † 284.a †
13 Where a writ of right lyeth for a rent 160.a ¶
14 What shall be said a sufficient seisin to maintaine a writ of right, and what not, 280.b ¶ 281. a per tot. pag. 293. a † *
15 What Corporation may maintaine a writ of right, and what not, vide tit. Corporation.
16 Where iudgement final shall be giuen in such writ, albeit the grand assise giue not their verdict upon the mere right.295.b †
17 The forme of the iudgement in a writ of right. ibid.
18 within what time claime ought to be made for the auoydance of such iudgement, 254. ¶ 262.a *

¶ Riot.

What number of persons may commit a riot, 257. a ¶ vide tit. Forcible entry.

¶ Robberie.

1 The acception and deriuation of the word, 288 a *
2 What shal be said a good plea in an appeale of robbery, vide tit. Appeale.
Ruscaria, quid, 5.a †

Saliva quid, and what shall passe in a grant by that name 4.b *

¶ Scire facias,

1 Such writ whence so called, and where it lyeth, 290.b * vide stat. W.2.cap.45.
2 A release of actions a good bare in a Scire facias 290. b ¶ 291.a †
3 Where and upon what iudgement the Tenant hauing a warranty, and a recouery being had against him shall haue a Scire facias upon assets descended after, & where not.366.a *
4 Where in such writ the tenant shal recouer the land lost, and where the assets descended, 366.a *
5 Where upon euiction of lands &c. in execution, a Scire facias lyeth to extend other lands &c. and where not, vide. stat. 32. H. 8. cap.5.
Scutagium, quid.68.b * 75.a †

¶ Seales.

1 The antiquity of sealing of Charters.7. a *
2 When sealing with armes began. ibid.
3 Inheritances passing under the great seale of England shall be descendible according to the common Law of England, 9.a *
4 Under what seale a protection shal be allowed, and under what not. vide tit. Protection.

¶ Seisin.

1 The signification of the word, 153.a *
2 The seuerall sorts of seisins, 29.a †
3 Where a seisin of parcell shall be a sufficient seisin in law to haue an assise for the whole. 153.a * 315.a *
4 What shal be said a sufficient seisin of a rent to haue an assise, & what not, 159. b ¶ 160. a * 314. b ¶ 315. a †
5 Where seisin of a rent by the Lord before his Feoffement of the Manor shall not enable him to bring an assise after entry for a condition broken, 202. b † vide tit. Conditions.
6 To what purposes the seisin of a rent shall be a seisin of the reuersion, and to what not, 15.a *
7 Where seisin of a rent by the hands of one Ioyntenant shall be good for all, 315.a *
8 Where the seisin of homage or fealty shal be a seisin of all other seruices, 68.a ¶
9 What shall be a sufficient seisin in the husband to entitle the wife to Dower, vide tit. Dower.
10 What shal be a sufficient seisin in the wife to entitle the husband to be tenant by the curtesie, Vide tit. Curtesie of. &c.
11 What seisin shall be sufficient to make a possessio fratris, and what not, vide tit. Possession.
12 What shall bee a sufficient seisin by the Lord to best in him the lands &c. of his villeine, and what not. vide tit. Villeinage.
13 What shall be a sufficient seisin by a Bastard during his life to barre the mulier after a discent, and what not, vide tit. Bastardy.
Vide Stat. 32. H. 8. cap. 2, of limitations concerning the seisin of rents, &c. and what actions and services shall bee said within this Statute, and what not.
Selda, quid, 4.b *
Selio terræ, quid et unde, 5. b ¶.

¶ Sequatur sub suo periculo.

Such Writ whence so called, and where it lyeth. 101. b ¶

¶ Serieanty.

1 The description of tenure by grand Serieanty, and why so called, 105. b †
2 How it differeth from Escuage, 105. b ¶ 106. a ¶ & b.
3 The special properties of this seruice, 105.b ¶
4 The holding by what offices shall be said grand serieanty, 106.a † *
5 Where tenure by Cornage shall be grand sergeanty and where not, 107. a †
6 The relefe of a tenant by grand serieanty, 106. b †
7 Where such tenant may make a deputy, and where not, 107.a *
8 Tenure invenire hominem ad guerram infra 4. Maria grand serieanty. ibid.
9 what persons are capable to performe this seruice in person, and what not. 107. b per tot. pag.
10 The incidents and fruits of this seruice, 108, a †
11 Tenure by petit Serieanty described 108, a *
12 Such tenure but Socage, ibid.

The Table.

¶ Services.

1 Servitium, quid & quotuplex, 65 a †
2 What said to be forreine seruice. 68. b ¶ 69. b * 74. b ¶
3 What seruices be incident to other, and shall passe by grant of other. vide tit. Appendant & Fealty.
4 Where a Corporall seruice may bee performed by Deputy, and where not. 79. a b 83. a † 107. a * b † *
5 By purchase or descent of part of the tenancy to the Lord where and what seruices shall be extinct or apportioned, and where and what not, vid. tit. Apportionment & Extinguishment.
6 What Corporall seruices may become secke, and what not, 151. a † ¶
7 By grant of the seruices of tenant in taile what shal passe vide tit. Grants.
8 Where a seisin of one seruice shall be a seisin of all other seruices to make an auowry, vide tit, Seisin.
Vide tit. Fealty, Homage, Knights service, Rents & Tenure.
Shawe, quid 4. b ¶ Services reasonable 56. b.

¶ Sheriffe.

1 The Etymology of the word, 109. b ¶ 168. a *
2 Whence called vicount. 168. a *
3 His office and duty. ibid.
4 The antiquity of this office, and how called anciently, 168. a ¶
5 How the Sheriffe ought to demeane himselfe in executions by Elegit &c. Vide tit. Execution & Stat. W. 2. cap. 18.
6 The deriuation of the word (Shire) 50 a † 168. a *
7 From what antiquity this Kingdome diuided into shires 168. a ¶
8 County whence so called, 50. a †
Simony, how odious in law, 17. b * 89 a † 344. b * vide Stat. 31, Eliz. cap. 6.

¶ Socage.

1 The Etymon of the word, 86. a † b †
2 Tenure in Socage described 85. b †
3 How such tenants were anciently called 86. a †
4 What tenure which is not Knights seruice shall be said a tenure in Socage, and what not, 86. a * ¶ 87. a
5 Where tenure by Escuage shal be Knights seruice, and where Socage, vide tit. Escuage.
6 The reliefe of a tenant in Socage, vide tit, Reliefe.
7 What things incident of common right to such tenure, 91 a †
8 What person may be capable of a gardeinship in Socage and what not, 88. b †
9 Where a Gardein in Socage shall haue a ward by cause of ward, 88. b †
10 Where the next cosen of part of the mother shall be gardein in socage before the next of part of the father, & è conuerso. 22 a † 88. a ¶
11 Where two are in equall degree of Affinity to the heire, which shall be gardein in Socage, 88. a *
12 Where he shal not be gardein to whom there may be any possibility of discent 88. b † *
13 The difference betweene the common and ciuill law in that point 88. b *
14 Where such gardein cannot forfeit or dispose of his interest, 88. b ¶ 89. a †
15 Where he shall not present to the benefice of the heire. 17. b. *. 89. a †
16 At what age the heire shal haue an account against gardein in Socage. 89. a † vide Stat. Marlebr. ca. 17.
17 For what things he shal be accomptable, 88. a 89. b *
18 What allowances he ought to haue upon his accompt. 89 a *
19 Where upon such accompt no Capias lyeth against the Gardein. 89. a *
20 Where a stranger shall be charged as Gardein in Socage 89. b ¶
21 Where the Gardein occupying after the heire accomplish his age of 14. shall be charged in an accompt as bayliffe, 90. a *
Sokemans, & Sockmanni qui. 5. b * 86. a †
Solinum, & solinus terræ quid, 5. a ¶

¶ Summons & Severance.

1 Sommons what and whence deriued, 158. b *
2 The seuerall kindes of summons, and by what persons it ought to be made, ibid.
3 Severance what, and the diuers sorts of seuerance. 139. b †
4 Where in a detinue of Charters, Summons and Seuerance lyeth, vide tit. Detinue.
Stadium terræ quid. 5. b †
Stagnum, quid, and what shall passe by that name 5. a ¶
Staulawe, quid, 4. b ¶

¶ Statutes.

¶ Magna Charta edit. Anno 9. Regis H. 3.

The diuers appellations in law of this statute, 81. a † *
The seuerall times it hath beene confirmed, 81. a ¶.
No other but a confirmation of the common Law. 81. a * 115. b *
Judgement or statute against this Charter boyde. 81: a ¶
Why said to be made 20. H. 3. when in truth it was 9. H. 3. 43. a ¶
Magna Charta cap. 2. Of Reliefs. 36. a * ¶ 83. b † * 106. a ¶
Magna Char, cap. 4. Of waste. 53. b *
Magna Char. cap. 7. Of Quarentines, 32. b *
Magna Char, cap. 11. Of Common pleas. 71. b *
Magna Char. cap. 20. Of Castlegard, 70. a *
Magna Char. cap. 28. Of wager of Law. Who said to be Baliuus within this Stat. 168. b † *
Magna Char, cap. 32. Of alienation of part of the tenancie, 43. a *
Magna Char. cap. 36. Of Mortmaine, 2 b *

¶ Merton, edit. 20. Regis H. 3.

Merton cap. 1. Of Dower, 32. b *
Merton cap. 3. Of rediseisin, 154. a & b
Merton cap. 5. Of vsurie against an Infant, 246. b *
Merton cap. 9. Of Wards, 76. a ¶ 80. a 81. a
Merton cap. 8. Of Limitation, 114. b ¶ 115. a †

¶ Marlebrige

¶ Marlebrige edit. 52. Regis H. 3.

Marlebr. cap. 17 **Of Wards, what shal be said Legitima ætas within this Stat. for the heire to haue an account against Gardein in Socage** 89 a †
Marlebr. cap. 22 **Of Repleuins,** 145. b*
Marlebr cap. vlt. **which giueth a writ of Entry in the post** 238. b ¶ 239 a †

¶ Westm. 1. edit. anno 3. Regis E. 1.

Westm. 1 cap. 13 **Of Rapes,** 123. b ¶
Westm. 1 c. 21 **Of Waste by Gardeins,** 53. b *
Westm. 1 cap. 26 **Of Extortion,** 368. b † *
Westm. 1 cap. 36. **Of** Ayde pur file marier & faire fits Chivaler, 162. b*
Westm. 1 cap. 38 **Of Limitation,** 114. b ¶ 115. a †
Westm. 1 cap. 40. **Of Counterplea of Voucher,** 358. a ¶ b †

¶ Gloceſter edit. anno 6. Reg. E. 1.

Gloceſt. cap. 1 **Of Dammages,** 359. b ¶ 360. a †
Gloceſt. c. 3 **Of Collateral Warrantie, and the expoſition of the ſeuerall parts of this ſtat.** 365. a ¶ b † * 366 a 381 a ¶ & b 382. a & b 383 a & b †
Gloceſt. cap. 5. **Of Waſte,** 53. b 54 b 200 b * 247 b * 355. b † ¶
Gloceſt. c. 6. **Of** Mordanceſter **giuen to the heires of ſeuerall degrées from the common Anceſtor.** 164. a ¶
Gloceſt. cap. 11. **Of Reſceit of tenant for yeares, &c. and its expoſition, and to what perſons it extendeth.** 46. a † * vide Stat. 21. H. 8 cap. 15.

¶ De Religioſis edit. anno 7. Regis E. 1.

De Rel. cap. 1. **Of Mortmaine,** 2. b *

¶ Acton Burnel edit. anno 11. E. 1.

Acton Bur. cap. 1. **Of Recogniſance.** 289 b *

¶ Weſtm. 2 anno 13. Reg. E. 1.

VVEſtm. 2. cap. 1. De donis Conditionalibus, **and what alienations are reſtrained by this ſtatute, and what not,** 18. b ¶ 19. a 24. a ¶ 223. b ¶ 224. a † 262. a ¶ 327 b † *
The occaſion of making this Statute, and the commendation of the makers thereof, 19 a † 392 b †
Weſtm 2. c 3. **Of** Cui in vita, **and the Reſceit of Femes.** 280. a 352. b ¶ 353. a † 355. a ¶ b * 356. a *
Weſtm. 2 c. 4. **Which giueth** a quod ei deforceat, **and the expoſition of it, and to what perſons and actions it extendeth,** 331. b * 354. b ¶ 355. a & b 356. a †
Weſtm. 2. cap. 5. **Of** quare Imp. **and** Darrein præſentment. 344. b †
Weſtm. 2. c. 9. **Of Forjudger of Meſnes, and to what perſons this ſtat. extendeth, & to what not,** 100. a ¶ b †
Weſtm. 2 c. 12. **Of Auditors and Account,** 89. a * 295. a ¶
Weſtm. 2 cap. 13. **Of Appeales** 139. b * 289. a ¶
Weſtm. 2 cap. 18. **Of** Elegit **and Executions, and how the Sheriffe ought to demeane himſelfe therein** 289. b †
Weſtm. 2 cap. 21. **Of** Ceſſavit, 154 a †
Weſtm. 2 cap. 23. **Of Waſte by Joyntenants and Tenants in common** 200. b *
Weſtm. 2, cap. 24. **Of a Writ of entry in** Conſimili caſu 54 b †
Weſt. 2. c. 26. **Of double Dammages in a Rediſſeiſin** 154. a *
Weſt. 2 cap 38. **Of Jurors,** 158 a †
Weſtm. 2 cap. 39 **Of Rauiſhment of Ward,** 136 b ¶
Weſtm. 2 cap. 45 **Of Execution by** Scire facias **after the yeare,** 291 a †

¶ De Mercatoribus edit. anno 13. Reg. E. 1.

DE Merca. c. 1 **Of Recogniſance and the expoſition of the parts of this Statute,** 286 b * 290 a * ¶
Anno 18 E. 1 quia emptores terrarum, 43 b * 98 b 143 a *
Anno 28 E. 1 Artic. ſuper Chart cap. 9 **Of Jurors,** 158 a †

¶ Statut. edit. tempore Regis E. 3.

ANno 1 E 3 cap. 12 **Of Alienations without licence,** 43 b †
Anno 25 E. 3 cap. 19 **Of Protections,** quia indebit, 131 b *
Anno 31 E. 3 cap. 11 **Of Adminiſtrators,** 133 b *
Anno 34 E. 3 cap. 15 **Of Alienations without Licence,** 43 b †
Anno 34 E. 3 cap. 16. **Of Non-claime,** 262. a †
Anno 36 E. 3 cap. 15 **Of Counts not abating for want of forme,** 304 b * vide tit. Pleadings.
Anno 38 E. 3 c. 4. **Of Obligations in the third perſon made void, and to what bonds conſtrued to extend, and to what not,** 229. b ¶ 230 a *

¶ Statut. edit. temp. Reg. R. 2.

ANno 1 R. 2 cap. 9 **Of Feoffements for maintenance,** 369. a †
Anno 2 R. 2 cap. 10 **Of Aſſiſes in Confinio Comitatus,** 154 a †
Anno 9 R. 2 cap. 2 **Of Villeins,** 124 b ¶ 125 a
Anno 12 R. 2 cap. 2 **Of placing Officers of Juſtice.** 134 a ¶
Anno 13 R. 2 cap. 16 **Of Protections** 131 b †
Anno 16 R. 2 c. 5 **Of** Præmunire, 130 a †

¶ Stat. edit. temp. Regis H. 4.

ANno 1 H. 4 c. 6 **Concerning grants by the King, and what perſons are reſtrained by this Act, and what not** 133 a ¶
Anno 2 H. 4 c. 7 **Of Nonſuits,** 139 b †
Anno 4 H. 4 c. 17 **Of age to enter into Religion,** 137 a †

¶ Stat. edit. temp. Reg. H. 5.

ANno 2 H. 5 c. 3 **Of Jurors, and how expounded by equity,** 272 a * ¶ b †

¶ Stat. edit. temp. Regis H. 6.

Anno 8 H. 6. c. 9 **Of forcible entry,** 257. b †

¶ Stat edit. temp. Reg. H. 7.

ANno 4 H. 7 c. 17. **Of the wardſhip of the heire of Ceſtuy que uſe** 84 b ¶
Anno 4 H. 7 c 24 **Of Fines,** 262 a † 326 a * 372 a ¶ b †
Anno 11 H. 7 c. 20 **Of Diſcontinuance of womens Joyntures,**

tures, and what shal be said an alienation of the wife within this Statute, and what not, 3. 6 b * 365 b * ¶ 366 a † 381 a †
Anno 19 H.7 c. 15 Of Uses, 91 a * 117 a ¶

¶ Stat. edit. temp. Regis H. 8.

ANno 7 H. 8 cap. 4. Of Auowries by Recouerors, 104 b *
Anno 21 H. 8 ca. 4 Of sale of lands by Executors. 113. a *
Anno 21 H. 8 cap. 15 Of falsifying Recoueries by Lessees for yeares, and of Auowries by the Recouerors, 46 a * 104 b * ¶
Anno 21 H. 8 cap. 19 Of Auowries, and the exposition of the seuerall parts of the Statute, 268 b † * 312. a †
Anno 23 H. 8 cap. 3 Of Attaints 394 b * ¶
Anno 23 H. 8 cap. 5 Of giuing the special matter in Euidence by any Officer authorised by the Commission of Sewers, 283 a ¶
Anno 23 H. 8 cap. 6 Of Recognizance and Stat. Staple, and the exposition of the parts of this Statute. 289. b * 290 a * vide Stat. 32. H. 8 cap. 5
Anno 26 H. 8 cap 13 Of forfeiture of Lands for Treason, 371 b † 392 b *
Anno 27 H. 8 cap. 10 Of Uses, 187 b * 257 a * 271 a † 287 a *
Anno 27 H. 8 cap. eod. Of womens Joyntures, and what what shall be said a good Joyture within this stat. and what not, 36 b per tot. pag. vide tit. Dower.
Anno 28 H. 8 ca. 15. Of triall before Commissioners for Pyracie, Robbery, &c upon the Sea, 191 a * ¶
Anno 32 H. 8 cap. 1 & 34 H. 8 cap. 5 Of Wills & Wardships, and the exposition of the seuerall parts of these Statutes, 76 a ¶ 78 a per tot. pag. b † 111 b per tot. pag.
Anno 32 H. 8. cap. 2 Of limitations, and what actions and seruices shall bee said within this Statute, and what not, 115 a †
Anno 32 H. 8 cap. 5 Of Extents and Execution, and the exposition of the seuerall parts of this statute, 289 b * ¶ b † *
Anno 32. H. 8 cap. 7 Of Tithes, and the remedy for them 159 a † *
Anno 32 H. 8 cap. 9. Of maintenance 369 a *
What shall be said a pretensed right, or title within this statute, and what not, 369 a *
What persons may buy or sell a pretensed right or title within this statute, and what not, 369. a ¶ b †
Of what estate such pretensed right may bee, 369 a ¶ b †
By what way or meane such person may gaine such pretensed right or title, and by what not, 369 b *
Anno 32 H. 8 cap. 28 Of Leases by tenants in taile, husband and wife, and spirituall Corporations and what things requisite to the perfection of such Leases, and what not. 44 a & b 333 a *
Anno 32 H. 8 cap. eod. Of discontinuance of the wiues estate by the Husband, and the exposition of the seuerall clauses in this branch of the statute, 316 a per tot. pag.
Anno 32 H. 8 cap. 31 Of recoueries suffered by tenants for life, 362 a † vide Stat. 14 Eliz. cap. 8
Anno 32 H. 8 cap 32 Of partition betweene Joyntenants & tenants in Common, & the exposition of the parts of this stat. 169 a * 175 a ¶ b † 187 a *
An. 32 H. 8 cap. 33 Of dissents which take away entries, and the exposition of the seuerall parts of this statute 238 a * ¶ 256 a * vide tit. Entry congeable.
Anno 32 H. 8 cap. 34 Of conditions, and the exposition of the seuerall parts of this statute, and what person shal take aduantage of a condition within this statute, and what not, 215 a b †
Anno 32 H. 8 cap. 36 Of Fines, 372 b ¶ vide Stat. 4 H. 7 cap. 24
Anno 32 H. 8 cap. 37 Of Remedy for the arrerages of rents, and the exposition of all the parts of this statute 162 a ¶ & b per tot. pag. 351 b †
Anno 32 H. 8 cap. 38 Of Mariages, 235 a *
An. 32 H. 8 cap. 46 & 33 H. 8 cap. 21 Concerning the erection of the Court of Wards, 77 a ¶
Anno 34 H. 8 cap. 5 Of Wills and Wards, vide Stat. 32 H 8 cap. 1
An. 34 H 8 cap. 10 Of Recoueries against tenant in taile, the reuersion or remainder in the King, and the exposition of the seuerall parts of this statute, 335 a * 372 b * ¶ 373 a †
Anno 35 H. 8 cap. 2 Of Triall of treason committed out of the Realme, 261 b *

¶ Stat. edit. temp. Regis E. 6.

ANno 2 E. 6 cap. 6. Of Remedies for substractiõ of predial Tithes, 159 a *
Anno 2 E. 6 cap. 8 Concerning the finding of Offices, and the seueral benefits arising by the same statute, 77 b per tot. pag. 243 a *
Anno 3 & 4 E. 6 cap 4. Of pleading a Constat or Inspeximus of the Kings Letters Patents, 225 b * vide Stat. 13 Eliz. cap. 6

¶ Stat. edit. temp. Reg. Eliz.

ANno 13 Eliz. cap. 6 Of pleading a Constat or Inspeximus of the Kings Letters Patents. 225 b * vide Stat. 3 & 4 E. 6 cap 4
Anno 13 Eliz: cap. 10 Of Leases by Ecclesiasticall Corporations, and the exposition of the parts of this stat. 44 a & b vide Stat. 32 H. 8 cap: 28
An. 13 Eliz: c. 15 Against fraudulent conueyances, &c. and how it shal be extended by equity, 76 a ¶ 290 b †
Anno 14 Eliz: cap: 8 Of feined recoueries suffered by Tenant for life, 280 b * 356 a ¶ 362 a † *
Anno 18 Eliz. cap. 10 Of Leases by Spirituall Persons, 44 a & b vide Stat. 32 H. 8 cap 28 & 13 Eliz. cap 10
Anno 17 Eliz: cap. 4 Of fraudulent Conueyances, &c. & who shall be said a Purchasor within this statute, and who not, 3 b ¶ 290 b †
Anno 27 Eliz: cap: 6 Of Jurors, 272 b *
Anno 31 Eliz: cap: 6 Of Simony, and the exposition of it, 120 a *

¶ Stat. edit. temp. Regis Iacobi.

ANnno 1 Jac. cap. 3 Of estates made to the King by Bishops, 44 a † vide Stat. 13. Eliz. cap. 10 & 18 Eliz. cap. 10
Anno 7 Jac. cap. 5 Of giuing a speciall matter in euidence by the Kings officers, 283 a * vide Stat. 23 H. 8 cap. 5.

¶ Concerning

¶ Concerning Statutes in generall.

RUles obseruable in the construction of statutes, 381 a ¶ b †*.

The preamble a good meane to find the meaning of a stat. 79 a*

The equitie of a statute, what, 24 b †

Where cases within the same mischiefe shall be taken within the same remedie of a statute, 76 a ¶ 77 b † 290 b † 365 b *¶

Where a penall statute shall be taken by equity, & where not, 46 b † 154 a* 238 a* 268 b*

What shall be said a statute or Act of Parleament, where the King onely is mentioned, and what not, 98 a ¶ b*

Where an Act of Parliament shall binde the King without being named, and where not, vide tit. Prerogative.

Where the statute Law and Common Law meet, which shall be preferred, 49 a †

Where a statute shall be extended by equitie to other persons than are named therein, 290 a †

Where a statute speaking of a Reuersion, shall extend to a Remainder, Et e conuerso, 280, b* 356 a*

Where a statute shall extend by equitie to other actions than are mentioned, 54 b † 365 b †

Where a statute shall extend by construction to another manner of title or conueyance, than is mentioned, 326 a 365 b*

Where the generalty of the words of a statute shall bee restrained by equitie, and construction made against the letter, 172. a* b † 290. a †* 360. a † 365. b ¶ 366. a † 381. b*

Where the recitall of a statute in other words shall bee good, and where not, 98 b*

Where a Custome or Prescription may be alleaged against a statute, and where not. vide tit. Prescription.

Where the grant of the King shall be good against a statute, with the clause of Non obstante, and where not, and where it shall be good without such clause, vide tit. Prerogative.

¶ Statute Merchant and Staple. vid. tit. Execution. stat. Acton Burnel. Stat. de Mercatoribus, & 32. H. 8. cap. 5.

¶ Stethe seu Stede quid, 4. b

¶ Steward.

1 The Etymologie and signification of the word (Seneschall) 61 a ¶ b †

2 The office and dutie of a Steward of a Manor, 61 b †

3 The retainer of a Steward of a Court good without Deed, ibidem.

4 In what Courts the Steward is Judge, and in what not, 58 a * vide tit. Courts

¶ Stowe quid, 4. b ¶

¶ Surrender.

1 The description of a Surrender, 337 b ¶

2 The seuerall kindes of surrenders, 338 a †

3 Where and how a future interest may be surrendred. 338. a *

4 Where & of what things a surrender shall be good without Deed, and where and of what not 338 a *¶

5 Where the acceptance of a void estate shall bee a surrender, 218 b *

6 Where the feoffement of a particular tenant to him in the Reuersion or Remainder shal amount to a surrender, 42 a † 252 a *

7 Where tenant for life and he in the Reuersion ioyne in a feoffment by patroll, this shall be a surrender of the tenant, and the feoffement of him in the reuersion. 302 b ¶

8 Where tenant for life make a lease for his own life to his Lessor, the remainder to his Lessor, and a stranger in fee, this shall be a surrender for one moitie, and forfeiture for the other, 335 a *

9 Where and to what respects a particular estate after surrender shall be said to haue continuance, & where, and to what not, 338 a ¶ b †*

10 Where the acceptance of a surrender shall dispence with waste committed, vide tit. Waste.

11 Where a surrender to one Jointenant shall enure to both, 192 a ¶ 214 a †

12 Where a surrender upon condition shall be good, 218 b *

13 For surrender of Copiholds, vide tit. Copihold.

14 Where a freehold and inheritance may bee conueyed by surrender in Court, 59 b †

¶ Suspence.

1 The signification and derivation of the word 313 a *

2 Where a seigniory or rent service may be suspended in part, and in Esse for part, and where not 148 b †

3 To what purposes a seigniory suspended in part of the estate, shal be said to continue, & to what not, 314. a †

4 Where a thing in Suspence in the Ancestor shall take effect by discent in his heires, 313 a ¶ b † vide tit. Discent.

5 Where a thing in suspence may be granted ouer, and where not, vide tit Grants.

6 Where the Husband shal be tenant by the courtesy of a thing in suspence, and where not, vide tit. Courtesie of, &c.

7 Where the fruits of Knights seruice suspended the tenancy being in a Corporation, shall bee reuiued againe in the hands of a naturall person, vide tit. Knights seruice.

8 Where a warrantie in suspence shall binder a Remitter, vide tit. Warrantie.

9 Where the Debtor make the Debtee his Executor, the debt is in suspence, 264. b ¶

10 Where by the intermariage of a feme Executrix with the Debtor, the debt shall be in suspence, ibidem, vide tit. Extinguishment.

¶ Taile.

1 The Etymologie and derivation of the word (Taile) 18 b ¶ 22 a †

2 The diuision of estates Taile, 19 b *

3 The description of a tenant in generall Taile, 19 b ¶

4 The description of a tenant in speciall Taile, 20 b ¶

5 What things may be entailed, and what not, 19 b ¶ 20 a †*¶ 392 b ¶

THE TABLE.

6 Where an estate tayle may bee created without the word (Heires) 20. b † vide tit. Heires.

7 Where it may bee created without the word (Body) 20 b †

8 Where without the word (Engendred,) 20. b *

9 What things incident to an estate Taile, 224. a †

10 Where by a gift in Taile a Reuersion is setled in the Donor, 22. a ¶ b †

11 Where the will of the Donor in estates tailes shall be obserued, & where not, 20. b † 21. a † 24. b * ¶

12 Where a man shall inherit Per formam Doni, which is not issue of the body of the Donée, 20. b * 26. b * ¶ 220. a *

13 The tenure betweene such Donor and Donee, & where the tenant shall hold as his Donor hold ouer, & where not, 23. a *

14 A gift to a man and a woman not maried, or where one or both are seuerally married, & to the heires of their bodies a good Taile, 20. b ¶ 25. b ¶

15 Where a man may conuey an estate to himselfe in taile, 22. b ¶

16 A gift to a woman and two men, and the heires of their bodies, how it shall enure, 25. b ¶ 184. a †

17 A gift to two husbands & their wiues, and the heires of their bodies, how it shall enure, 25. b ¶

18 A gift to one and his heires, to haue to him, & the heires of his body, & è conuersò, what estate, 21. a †

19 A gift to a man & the heire of his body, Et vni hæredi ipsius hæredis, a good taile, 22. a *

20 Where the issue male inheritable per formam doni, ought to conuey himselfe by males, & the female by females, 25. a * ¶ 377. a † *

21 Where vpon a gift the Husband shall take in spectall Taile, and the wife nothing, or but for life, & è contrà, and where construction shall bee made according to the inclination of the word (Heires,) 26. a per tot. pagin.

22 A gift to the Husband and wife, and the heires of the body of the surutuor, what estate, & when said to bee, 26. a ¶

23 A gift to a man and his heires of the body of such a feme a good Tayle, & they shall be entended to be gotten by the Donée, 26. b †

24 A gift to a man and the heires of the body of his father a good Tayle, secus of a gift to him and his heires of the body, &c. 26. b * 27. a †

25 A gift to a man and his heires males or females, a fée simple, secus of a deuise, 27. a ¶ vide tit. Deuise.

26 A gift to one & the heires males of his body with condition to reuert if he die without heires females of his body, a void condition, 164. a *

27 A gift to a man, to haue to him & the heires males of his body, and to him & the heires females of his body, how it shall be construed, 377. a ¶

28 Where & what Leases by tenant in taile shall binde his issue at this day, & where, & what not, 44. a b. vide Stat. 32. H. 8. cap. 28.

29 Where a charge in fée by tenant in taile vpon the land, shall binde his issue, & where not, 343. b †

30 A gift in taile with condition to alien for the benefit of the issues, a good condition, vide tit. Conditions.

31 What actions in the realtie tenant in Taile may haue, & what not, 226. b ¶

32 Where tenant in Taile shall bee compelled to atturne, and where not, vide tit. Atturnment, & quid iuris clamat.

33 What act or conueyance was a barre to an estate Tayle at the Common Law, & what at this day, 372. a ¶ b † vide Stat. 4. H. 7. cap. 24. & 32 H. 8. cap. 36.

34 Where a warrantie shall be a barre to an estate Taile, & where not, vide tit. Warrantie.

35 Where an estate Taile may be barred at this day, notwithstanding a reuersion or remainder in the King, & where not, vide Stat. 34. H. 8. cap. 20.

36 A Recouery in a Writ of right or cessauit, no barre, 373. a *

37 A Release by Tenant in Taile, no barre to his issue of a Warrantie intailed, attaint, or writ of Error, 20. a ¶ 392. b ¶ 393. a †

38 Where lands in Taile shall bee forfeited for treason, secus in a Præmunire, vide Stat. 26. H. 8. cap. 13. & tit. Præmunire.

39 Where vpon a recouery against tenant in Taile, Execution shall be sued against his issue, & where not, vide tit. Recouery.

40 What Act, &c. shall bee a discontinuance of an Estate Taile, & what not, vide at large in tit. Discontinuance & Entry congeable.

¶ Taile after possibilitie of issue extinct.

1 The description of a tenant in Taile after possibilitie, & why so called, 27. b * 28 a †

2 The priuileges which such tenant hath aboue those of a Lessée for life, 27. b ¶ 28. b ¶ 318. a ¶

3 The qualities of his estate agreeing with those of a Lessée for life, 28. a †

4 Where his Assignée shall not haue those priuileges, 28. a * 316. a ¶

5 By what meanes such estate may bée created & altered, & by what not, 28. a * ¶

6 What persons may bée tenants after possibilitie, and what not, 28. b *

¶ Taini & Tainland quid 5. b * 86. a †

¶ Tallage.

What persons are freed by Law from Tallage, 31. a * 75. a * ¶

¶ Tenant at will, and sufferance.

1 The description of a tenant at will, 55. a †

2 What shall be said a determination or countermand of the will of the Lessor, and what not, 55. b ¶ 57. b †

3 What shall bee said a determination in Law of the will of the Lessée, and what not, 55. b. ¶. 57. a * ¶

4 What profit such Lessée shall haue which come by his owne manurance after the will determined, and what not, 55. b † 56. a ¶

where

Where he shall haue the corne, and where not, 55. a * b † *.

The remedie which hee hath to come by the corne or other goods after the will determined, 55. a * 56. a †.

Where a tenant at will shall bee punished for waste, and where not, 57. a † *

What remedie the Lessor hath for a rent reserued vpon a Lease at will, 57. b †

The difference betweene a tenant at will by the Common Law, and by the Custome, 62. b † *, 63 a † * 93. b †.

Who properly said to bee a tenant at sufferance, 57. b* 271. a †

Where the Termor continuing in possession after his estate ended, shall bee a tenant at sufferance, or a Disseisor at the election of his Lessor, 57. b *

The difference betweene a tenant at will and at sufferance, ibidem.

Where a Gardein in Chiualrie holding ouer his estate shall be an abator, 271. a *

A Release to a Tenant at sufferance void, vide tit. Releases.

¶ Tenants in Common.

Tenancie in Common described, and whence so called, 188 b

Where a gift to two in their Politicke capacities, or to one in his Politicke, and another in his naturall capacitie, shall enure to them in Common, 189. b 190. a

Where a Man may bee tenant in Common with himselfe, and where with himselfe and another, 190. a ¶ 193. b †

Where a verdict findes that a Man hath Duas partes manerii in tres diuisas, this shall not bee intended in Common, secus were it diuidendas, 190. b*

Where tenants in Common may be by prescription, 195 a ¶ b †.

Where and in what actions tenants in Common shall ioyne, & where & in what they ought to seuer, 195. b *. 196. a † 197. a b 198. a b

Where in an action by two tenants in Common the Release of one to the defendant shall goe in benefit to his companion, 197. b ¶

Where a ioynt Action betweene Tenants in Common shall surtue, & where not, 198. a † *

Where in a Quare Impedit by two tenants in Common, the death of one shall not abate the writ, vide tit. quare Impedit.

Where tenants in Common may make partition, and what partition betweene them shall bee good, & what not, 198. b *. vide Stat. 32. H. 8. cap. 32.

Where tenants in Common may be of Chattels, 198. a * b ¶ 199. a

Where & what Actions one tenant in Common may haue against his companion, & where & what not, 199. b 200. a & b

Where one tenant in Common shall haue an Account against his Companion, and where not, vide tit. Accompt.

Where one tenant in Common shall haue an Action of waste against his companion, and where not, vide tit. Waste, & Stat. West. 2. cap. 23.

Where two tenants in Common ioyne in the grant of a Rent, how it shall be construed, vide tit. Grants: vide tit. Ioyntenants.

¶ Tender and Refusall.

The signification of the word (Tender,) 211. a ¶

Where vpon Tender of Money, &c, a Refusall by the party shall bee a perpetuall barre to him for the same money, and where not, 207. a per tot. pag. 209. a ¶ b †.

Where a tender & Refusall without Vncore prist shall be a good plea in debt vpon an Obligation, & where not, 207. a *

Where a tender of Money in bags without shewing or telling shall be sufficient, 208. a †

Where a tender and Refusall shall giue a third person a title of entry or forfeiture, and where not, 209. a † *.

When no place is expressed in the condition for payment of money, or performance of other act, where tender & performance ought to bee made, 210. a ¶ b 211. a † b †. 212. b *. vide tit. Morgage.

Notice not sufficient to cause the Lord to change his Auowry without tender of the arrerages, vide tit. Auowry.

Where after tender and Refusall, the Lord shall not distraine his tenant for Homage vntill Request, vide tit. Homage.

Tender of Marriage, vide tit. Mariage.

¶ Tenellare seu Tanellare quid. 5. a *.

¶ Tenure.

The seuerall acceptions in Law of the word (Tenure) 1. a †

By a grant of all tenements what shall passe, 6. a † 19. b. ¶ 154. a *

Where the tenant might alien parcell of his tenancie before the Statute of Quia empt. terrarum, & where not, 43 a *. vide tit. Stat. Mag. Chart. cap. 32.

The diuision of tenures, 95. a ¶

The tenure betweene the Donor and Donee in taile since the Statute of Westm. 2. & how construed, 23. a. 143. a †

Where the speciall Reseruation of the partie shall exclude the tenure created by the Law, vide tit. Reseruation.

What said to be a tenure in Capite, and whence so called, 108. a * ¶

Where a tenure may be of the King as of his person, & no tenure in Capite, 108. a ¶

Tenure by Cornage, what, 106. b ¶

Tenure to be vaccarius Regis donec vsus fuerit pari solutarum pretii. 4d 69. b ¶

Tenure to bee a Hangman, 86. a *

For others tenures see their peculiar titles.

¶ Testament.

The Etymologie of the word, 322. b †

Testamentum quid & quotuplex, 111. a †

The fauourable expositions of Testaments, 112. a ¶

Where lands shall passe by will nuncupatiue, & where not, 111. a *

Where a warrantie may be created by a will, & where not, 386. a *

6 At what age an Infant may make a will, and at what not, 89. b *
7 Where an Executor may release an action before probate of the Testament, vide tit. Executors.
Vide tit. Deuise.

¶ Testimonies.

1 What person capable to be a witnesse, and what not, 6. a ¶ b †
2 Where the witnesses shall be ioyned to the Enquest, for the triall of a Deed, 6. b *
3 Where a witnesse may bee challenged, & where not, vide tit. Challenge.
4 Where a man may be challenged to bee a witnesse, that cannot be Challenged to be a Juror, & è contrà, vide tit. Challenge, & Iuror.
5 In what Cases a woman admitted to be a witnesse & in what not, 6. b ¶ 25. a ¶
6 Where the partie to the vsurious contract shall not bee a Witnesse in an Information against an Vsurer, 6. b ¶

¶ Tillage.

1 The Commendation of Agriculture, & how respected in Law, 85. b † ¶
2 How Husbandmen anciently were called, 5. b *
3 The inconueniences which come to the Commonwealth by conuerting Tillage into pasture, 85. b †

¶ Time.

1 What said to be Time of limitation, and the seuerall sorts of it to seuerall purposes, 114. b ¶ 115. a †
2 The time of limitation in actions anciently, & at this day 115. a †: Vide Stat. Merton, cap. 8. Westm. 1. cap. 38. & 32. H. 8. cap. 2.
3 What said to bee Time of Memory, 113. b 114. a. 115. a *
4 Where and to what purposes the Law hath limited a yeare and a day to bee a Legall, and conuenient time, 254. b ¶
5 Retainer of a seruant generally, for what time it shall be construed, 42. b †
6 Where no time is limited for the performance of a condition, within what time it ought to bee performed, and what shall bee said a conuenient time, vide tit. Condition.
7 What time sufficient to gaine a name by reputation, & what not, 3. b †
vide tit. Day.
8 Time reasonable, by whom triable. 56. b *.

¶ Tithes.

How they became Temporall inheritances, and the seuerall remedies for them at this day in the Temporall Courts, 159. a †*. vide Stat. 32. H. 8. cap. 7. & 2. E. 6. cap. 6.

¶ Title.

1 The deriuation and description of a Title, 345. b *
2 The generalitie of the word, & how euery right is a Title, but not è contrà, 345. b * 347. b ¶ vide tit. Right.
3 Where by the release of a right, a Title is released, Et sic è conuersò, 345. b *

¶ Trauers.

1 Where the partie grieued shall haue a Trauers to an Office found, and where not, vide tit. Office. vide Stat. 2. E. 6. cap. 8.
2 Where a trauers shall bee admitted vpon a trauers, and where not, 282. b *
vide tit. Issue, & Pleadings.

¶ Treason.

1 What lands forfettable for Treason, and what not, vide Stat. 26. H. 8. cap. 13.
2 Treason out of the Realme, how triable, vide tit. Triall, & Stat. 35. H. 8. cap. 2.
3 Where the partie arraigned for treason stand mute, he shall haue iudgement by attainder as if he were conuicted, 391. a *
4 In intent to murder the Quéene, treason, 133. b †
vide tit. Attainder & Felony.

¶ Trespasse

1 Transgressio quid, & vnde 57. a ¶
2 Trespasse, quare consanguineum & hæredem cepit, by whom it lies, and against whom, and against whom not, 84. a ¶
3 Where it lieth by the Copiholder against his Lord, 60. b ¶ 61. a †
4 Where the Abbot and Monke shall haue a trespasse for beating the Monke, 132. b ¶
5 Where the Lessor shall haue Trespasse against his Lessée at will, or his Assignée before entry, 57. a * ¶
6 No accessaries in trespasse, 57. a ¶
7 Where a Release to one trespassor shall discharge his Companion, vide tit. Release.
8 Where vpon euery Continuance in possession by the Disseisor after a continuall claime, the Disseisée may haue an Action of trespasse, vide tit. Continuall claime.

¶ Triall.

1 Triall, quid & quotuplex, 124. b ¶ 125. a †
2 The antiquitie of triall by twelue men, 155. b *
3 How the Law deligheth in the number of twelue, 155 a. *.
4 Trialls otherwise than by a Jurie of twelue men, 74 a. ¶.
5 In trialls, from what place the Jurie ought to come, & from what not, 125. a * ¶ b †
6 Where vpon issue of heire, or not heire, triall shall bee where the birth is alleaged, and not where the Land lieth, & è conuersò, 125. b *
7 Vpon issue quod Rex non concessit, &c. triall shall bee where the Land lieth, and not where the Letters Patents beare date, ibidem.
8 When the matter extendeth into a place at Common Law, and a place within a Franchise, where it shall be tried, 125. b *
9 Where one Defendant plead to the writ, & the other to the action, which shall be tried first, ibid.
10 Where the plea of ons defendant being to part, & the plea of the other to the whole, that which goeth to the whole shall be tried first, and where not, 125. b ¶

In

11 In Issue for part, and Demurrer for other part, which shall be tried first, vide tit. Demurrer.
12 Where a matter alleaged out of the Realme may receiue Triall, and how, 261. a * ¶ b. vide Stat. 35. H. 8. cap. 3.
13 Where the originall Act is done within the Realme, & part out of the Realme, vpon which issue is taken, how this shall bee tried, and whence the Jurie shall come, 161. b * ¶
14 How murder done in a forreine Countrey may bee tried & punished here, 74. a ¶ 161. a *
15 Where one die within the Realme vpon a wound giuen out of the Realme, how it shall bee tried, 74. b †.
16 Issue of Earle, Baron, &c. or no Earle, &c. how triable, vide tit. Baron & Nobilitie.
17 In what Cases a Certificate shall amount to a Triall, 74 a *
18 Where Triall of Plenartie shall bee by the Common Law, & where by Certificate of the Bishop, vide tit. Plenartie.
19 Issue of Nul tiel Record, how triable, vide tit. Record.
20 How & by whom the reasonablenesse of a thing shall bee tried, 56, b * 59. b ¶ 62. a *
21 Where a Nobleman being arraigned shall bee tried by his peeres, 156. b † 294. a ¶
vide tit. Challenge, Iuror, & verdict.

¶ Twaite quid. 4. b ¶

¶ Vaccaria quid. 5. b. *

¶ Valuation.

1 The Estate, Reuenue, and Valuation of a Duke, Earle, Baron, &c. 69. a * ¶ 83. b †
2 The Reuenue & Valuation of a Knight, 69. a † * 83. b †
3 The Liuelihood & valuation of a Yeoman, 69. a ¶
4 Where the Lord shall haue the double Value of the mariage of the Heire, and where not, vide tit. Mariage.
5 What value shall bee paid to the King for primer seisin, or vpon Liuerie sued by the heire, vide tit. Liuerie, & Primer seisin.
6 Where the wife shall bee endowed, according to the improuement or decay of the value of the husbands estate after his death, & where not, vide tit. Dower.

¶ Ventre inspiciendo.

The forme of such writ, & where it lyeth, 8. b † *

¶ Verdict.

1 The signification and deriuation of the word, 226. a. ¶.
2 The seuerall kindes of Verdicts, 226. b †. 227. b * 228. a *
3 The forme of a generall verdict, 226. b *
4 Where a speciall verdict may be found vpon a single point in issue, 226. b ¶
5 A verdict finding a matter incertainly not good, 227. a †.
6 Where a verdict finde part of the issue, & nothing for the residue, it shall bee insufficient for the whole, secus where it findes more than the issue, 227. a * ¶
7 Where the substance of the issue is found, the verdict is good, notwithstanding any omission of circumstance, vide tit. Issue.
8 Where an Estoppell or a warrantie may bee found by verdict, 227. a ¶
9 Where the Jurie may varie from their verdict, & where not, 227. b † *
10 Where a verdict found against the letter of the issue shall be good, & where not, 114. b *
11 Where the deliuerie of a letter, or other writing of euidence to the Jurie after their departure from the barre, shall auoid the verdict, and where not, 227. b †
12 Where the Jurie may giue a priuie verdict, & where not, 227. b *
13 A Jurie sworne and charged in case of life and member cannot be discharged before verdict, ibidem.
14 In what actions, & vpon what issues, a speciall verdict may be giuen, 227 a † b *
15 Where a generall verdict in a matter in Law shall bee good, 228. a ¶
16 Where and vpon what verdict an Attaint lieth against the Jurie, and where and vpon what not, vide tit. Attaint.
vide tit. Issue, & Triall.

¶ Village.

1 The description of a Village, and whence so called, 115. b ¶
2 What Custome may bee alleaged within a village, and what not, vide tit. Custome.
3 Where the village or Towne shall bee said in Law to continue notwithstanding the decay of the houses, 115. b ¶
4 The number of Townes in England and Wales, 116. a. †.
5 Euery village a Borough, but not è conuersò, 115. b ¶
6 Where Nul tiel ville is pleaded, whence the Jurie shall come, 125. b †
7 Where the Jurie shall come out of the Parish or Manor, and not out of the village, & è contrà, vide tit. Manor & Triall.
Vide tit. Citie.

¶ Villeinage, and Villeine.

1 The Etymology of the word, 116. a †
2 The description of a tenure in villeinage, 116. a
3 How villeines were anciently called, 116. a †
4 How villeinage first began, 116. b *
5 Where a free man may hold in villenage, 116. a ¶ b † 117. b †
6 The diuers kindes of villeines, 117. b ¶ 110. a ¶
7 What inheritances or other things of a villeine, his Lord shall haue, & what not, 117. a *
8 Where a Lessee at will, for yeares, &c. shall haue the Perquisite of his villein in fee, 117. a * 124. a ¶ b †
9 In what right a Bishop, &c. shall bee said seised of the Perquisite of his villeine, 117. a * 124. b †
10 Where by the entry of the Lord vpon his villeine tenant in taile, his issue shall be barred for euer, 117. a *
11 Where an Alienation, Escheat, or Discent of the lands of a villeine, shall barre the title of his Lord before Entrie, 118. a b †

12 Where a disseisin to the villeine shall prejudice the Lord of his Entrie, & where not, 118. b *
13 What shall bee said a sufficient claime or seisure by the Lord, to vest in him the propertie of his villeines goods & what not, 118. b ¶ 145. b † 263. a ¶, vide tit. Continuall Claime.
14 Where Laches of entrie or seisure shall not prejudice the King of the Lands or goods of his villeine, 118. a * 119. b †
15 Where the inheritance of a villeine shall bee said in his Lord before Entry or Claime, and where not, 118. a 119. b †
16 Where the Lord may justifie his Entrie into Land, to make Claime to a Reuersion, or other profit of his villeine, 119. a b †
17 What shall bee said a sufficient Claime by the Lord, to vest in him the Aduowson of his villeine, & what not, 119. b * 120. a † *
18 Villeine regardant described, and whence so called, 120. b †
19 Who said to be a villeine in grosse, 120. b *
20 How a Man ought to prescribe in a villeine regardant, and how in a villeine in grosse, 121. a, vide tit. Prescription.
21 What Confession in a Court of Record shall make the partie a villeine, & what not, 122. b *
22 Where the father is a villeine, and the Mother frée & è contrà, how their issues shall bée reputed in Law, 123. a † *
23 A Bastard no villeine, vnlesse by his owne confession, 123. a ¶
24 Where & what Actions a villeine or Neife shall maintaine against their Lord, & where & what not, 123. b 124. a 126. b †
25 What act, &c. by the Lord shall be an Infranchisement to his villeine, & what not, vide tit. Manumission.
26 In what Cases the villeine shall bee priuileged against the seisure of his Lord, albeit he is not infranchised, 136. a ¶ b † 137. b *
27 Where an Action lyeth by the Lord against the husband for marying his Neife, and where not, 136. a * b *
28 Where and what charges of the villeine vpon his Land are auoydable by the Lord after Entrie, & where & what not, 184. b ¶
29 Where and by what meane the Lord may bee disseised or dispossessed of his villeine, & by what not, 306. b * ¶. 307. a †
30 Where the Disseisée may seise his villeine regardant before re-continuance of the Manor, to which, &c. and where not, 107. a †
31 Where a stranger, by the acknowledgment of the tenant in a Præcipe, to bee his villeine, shall bee said actually seised of the Fréehold & Inheritance without Entrie, vide tit. Freehold.

¶ Virgata terræ quid. 5. a ¶ 69. a *

¶ Voucher.

1 2 The Etymology & signification of the word, 101. b †
The seuerall sorts of vouchers, 102. a †
3 To what things it extendeth, and to what not, vide tit. Warrantie.
4 The seuerall Proces against the vouchée, and vpon what default after Proces Iudgement shall bée giuen against the tenant, & vpon what not, 101. b ¶, 393. a *
5 Where vpon iudgment giuen against the tenant, he shall haue iudgement ouer against the vouchée, & where not, 101. b ¶ 393. a *
6 Where the tenant after he hath béene impleaded, & iudgment giuen, shall haue a Warrantia Chartæ, or vouch againe, & where not, 102. a † 393. a *
7 Where the warrantie descend vpon the Heire at Common Law, & the Land to a speciall Heire, the tenant may vouch both, 376 a ¶ b †
8 Where the speciall Heire shall ioyne with the Heire at Common Law, to deraigne a warrantie paramount, and to whom the Recompence in value shall enure, 376. b † *
9 Where a Bastard shall be vouched by reason of the warrantie of his father, vide tit. Bastard.
10 Where and how a Man or his Assignée may vouch, by reason of a warrantie annexed to a Release or Confirmation where nothing passed, 385. a ¶ b †. vide Stat. W. 1. cap. 40.
11 Where a Man may vouch himselfe by reason of a warrantie, 390. a †. 384. b ¶
12 Where the wife being receiued shall vouch her husband, & è conuersò the husband himselfe and his wife, albeit the warrantie bée in suspence, 390. a *
13 Where & how an Infant in ventre sa mere may bee vouched, 390. a ¶
14 Where the Feoffée may vouch as of Lands discharged of a Rentcharge or Secke, secus as of Lands discharged of a Rentseruice, 388. b ¶ 380 a †
15 Where a purchaser shall vouch as heire, 384. b ¶
16 Where a man shall vouch as Assignee, & who shall bée said an Assignée to take aduantage of a warrantie by way of voucher, & who not, vide tit. Warrantie.

Vide tit. Recouerie in value, & Warrantie.

¶ Vses.

1 The definition of an vse, 272. b *
2 The seuerall wayes whereby vses may bee raised, 271. b ¶
3 Where there may bee two vses in esse of the same Land at the same time, & where not, 271. b ¶ 272. a †
4 What persons may be seised to the vse of others, & what only to their owne vse, 19. b *
5 What shall bee said a sufficient consideration of bloud to raise an vse, and what not, 123. a ¶ 237. a *
6 Where vses shall ensue the nature of the Land, 23. a †
7 Where a power to reuoke vses shall bee good, & what reuocation by reason of such power shall be good, & what not, vide tit. Reuocation.
8 Where by the same conueyance, an old vse is reuoked, a new may bee created, 237. a *
9 Where a Feoffment is made to the vse of a last will, or of such persons as shall bee named in a last will, in whom the vse shall be said to repose in the interim, 111. b ¶ 112. a † 271. a ¶ b
10 How the intent of the parties shall operate in the raising, & direction of vses, vide tit. Intentions of, &c.
11 Where the heires of Cestuy que vse shall be in ward, and pay reliefe, vide Stat. 4. H. 7. cap. 17. & 19. H. 7. cap. 15. vide Stat. 27. H. 8. cap. 10.

¶ Vsurpation.

THE TABLE.

¶ Vsurpation.

The seuerall acceptions of the word, & how it differeth from a Disseisin, intrusion, &c. 277. a ¶ b †

Vide tit. Presentation, & quare Imp.

¶ Wager of Law.

1 WAger of Law what, & the manner of it, and whence so called, 294. b ¶ 295. a †
2 Where it lieth, & in what actions, & where and in what not, 172. b † 295. a. per tot. pag.
3 Where the husband & wife shall wage their Law for the debt of the wife before Couerture, 172. b †.
4 What persons may wage their Law, & what not, 172. b † 295. a † *
5 Where a man shall wage his Law of another mans deed, & where not, 295. a ¶

¶ Wales.

1 The Etymologie of the word, 175. b ¶
2 The Principalitie of Wales holden anciently of the Crowne of England, 97. a ¶

¶ Wardship.

1 WHere the heire of Disseisee shall be in ward before recontinuance of his estate, 76. b ¶ 270. a †
2 Where the heire shall bee in ward, albeit his Ancestor died not seised, nor within the Homage of the Lord, 76. b † *
3 Where by the determination of the Estate or Tenure of the heire, the wardship shall cease, 76. a † b * ¶ 248. a ¶
4 where the Heire being remitted, or recouer in a Formedon, or Non compos mentis, &c. shall be in ward, 76 b † *
5 where the Lord shall haue a double wardship for the same Land, 76. b ¶
6 where the heire of Tenant in Taile shall bee in ward, notwithstanding a Discontinuance, & to whom, 76. b ¶ 77. a † 78. a †
7 where the King, by reason of wardship, shall haue the custodie of lands holden of other Lords, and inheritances which lye not in Tenure, & where not, 77. a †
8 where the heire at this day shal be in ward, notwithstanding a Conueyance ouer by his Father in his life, & where not, 78. a. per totam pag. vide Stat 32. H. 8. cap. 1.
9 where the heire shall be in ward vpon a Conueyance by his Ancestor, for the aduancement of his wife or children, or payment of his debts, & where not, 78. a per tot. pag.
10 where a Conueyance by the Grandfather to the Son, shall cause a wardship, & where not, 78. a ¶
11 where the Sonne shall bee in ward, albeit nothing descend, 78. b †
12 where the Lord shall haue the wardship of the Land, notwithstanding the mariage of the heire in the life of his Ancestor, 75. a ¶ 79. a †
13 where the Lord shall haue both wardship & Releefe of the same heire, & where neither, vide tit. Releefe.
14 where a man hath a double Title to wardship, one as Father, and the other as Gardeine in Thiualrie, or Socage, in which hee shall bee said to bee in, 84. b † 88. b *
15 where the heire of Cestuy que vse shall be in ward, vide Stat 4. H. 7. cap. 17.
16 where the Heire of a Tenant in Socage shall bee in ward, 76. a *
17 where wardship may bee granted without Deed, and where not, 85. a per tot. pag.
Vide tit. Mariage.

¶ Wardwite quid, 83. a ¶

¶ Warrantie.

1 THe description of a warrantie, 365 a †
2 The seuerall kindes of warranties, 364. b ¶ 365. a *
3 To what things a warrantie may extend or be annexed, & to what not, 101. b * 366. a ¶ b † 389. a † *
4 Vpon what Conueyances a warrantie may be created, & vpon what not, 371. a ¶ b † 386. a *
5 what words are requisite to the creation of a warrantie in Deed, 383. b 384. a †
6 where the word (Heires) requisite to the creation of a warrantie of inheritance, & where not, 47. a * 378. a ¶ 383. b * 384. b * ¶ 385. b *
7 where no person is mentioned in the clause of warrantie, to whom it shall be intended, 383. b *
8 what words shall amount to a warrantie in Law of a Freehold or Chattell, and to what Estate a warrantie in Law is said to be annexed, & to what not, 384 a * ¶ b †
9 where the word (Dedi) implyed a warrantie of inheritance at the Common Law, & where onely for the life of the Donor, 384. a *
10 where a warrantie expresse shall not take away a warrantie in Law, 384. a ¶
11 The description of a warrantie which commence by Disseisin, & why so called, 388. b †
12 where a warrantie, albeit the disseisin bee mediate or to another person, shall be said to commence by Disseisin, & shall not barre the heire, 366. b ¶ 367. a †
13 where a warrantie annexed to a Feoffment many years after the Disseisin shall bee said to commence by Disseisin, & where not, 367. a * 369. b ¶ 371. a *
14 where a warrantie vpon a Feoffment to Barretors or Extortioners, whereby the Tenant waiues the possession shall be said to commence by Disseisin, 368. a ¶ 369. b *
15 where a third person shall take aduantage of a warrantie commenced by Disseisin to another, 367. a †
16 A warrantie commencing by intrusion, Abatement, &c. no barre, 367. a ¶
17 where a warrantie annexed to a Feoffment de facto shall binde the parties, & bee good against all but him that right hath, 367. a * b †
18 The description of a lineall warrantie, & why so called, 370. a * ¶ 371. a * 375. a ¶
19 where a warrantie lineally descending shall be collaterall 370 b ¶ 371 a † 374. b ¶ 376. a † 379 b ¶
20 where a warrantie collaterally descending shall be lineall, 370 a ¶ 371. b † ¶
21 where the same warrantie shall bee collaterall in respect of some persons, & lineall in respect of others, 371. b ¶ 372 a †
22 where a warrantie shall be lineall to the heire, albeit he conueyeth not his discent from him that made the warrantie, 371. a ¶ b ¶
23 where a lineall warrantie shall be a barre to a Fee simple,

gie, but not to an Estate Taile without Assets. 374. a † * b * 393. b * vide tit. Assets.

24 Where Baron & Feme Tenants in speciall taile discontinue, the warrantie of either shall bee lineall to the Issue, & no barre, 375. a † *

25 Where and why a collateral warrantie shal be a barre to an Estate taile, & the reuersion of the Donor, 373. a ¶ 374. b † *

26 Where a warrantie shall barre a future right, 265. a ¶

27 Where a warrantie descending in one right, shall bar the heire claiming in another, secus of an Estoppel, 365. b * vid tit. Estoppell.

28 Where a collaterall warrantie shall not barre a right by succession, 370. a ¶ b †

29 No barre to a title of entrie, 379. b † 389. a *

30 Where a warrantie descending vpon an Infant or Feme-couert shall be a barre, & where not, 380. a ¶ b †

31 Where the warrantie of tenant by the Courtesie shall be a bar to the Issue at this day, and where not, & what remedie the heire or his Issue hath against the alienee, 379. b * ¶ vide Stat. Gloces. cap. 3.

32 Where the warrantie of the husband, being not Tenant by the Curtesie, shall be a bar to the issue of the wife, & where not, 366. a *

33 Where the warrantie of Tenant in Dower was a bar at the common Law, & how restrained at this day, 365 b * ¶ 374. b ¶ 380. a † 381. a † vide Stat. 11. H. 7. cap. 20.

34 Where the King shall be barred of a right or possibilitie of Reuerter by the collaterall warrantie of a subiect, & where not, 19. b † 370 b †

35 Where a warrantie descending vpon the wife, shall hinder her disagreement to an Estate made during the Couerture, 380. b *

36 Where a collaterall warrantie descending vpon the issue in taile before the Discent of the right shall bee a bar to him, & where not, 388. a ¶ b †

37 Where a warrantie shall bar, albeit the estate was not put to a right at the time of the warrantie made, and where not, 388. b * ¶ 389. a †

38 A collaterall warrantie no bar in a writ of Dower, or Causa matrimonii prælocuti, 389. a *

39 Where tenant in taile to him and his heires males, the remainder to him and his heires females discontinue with warrantie, such warrantie is lineall to both, and shall bar neither, 377. a

40 Where after a Discontinuance a warrantie Descending vpon two daughters, where one onely is inheritable to the Estate, shall be a bar to the daughter inheritable for the whole, 373. b *

41 Where tenant in taile die hauing two daughters, & one enter & make a Feoffment with warrantie, this shall bar the other Sister, as to her part, but not as to the part of the Feoffor, 373. b 374. a

42 Where a warrantie shall descend only to the heire at the Common Law, 376. a * ¶ 386. a ¶ b 387. a †

43 Where two Brothers being by diuers venters, the eldest release with warrantie to the Disseisor of the Uncle, & die without issue, after the death of the Uncle, the Entrie of the younger is congeable, notwithstanding the warrantie, 387. a *

44 Where the father vpon a mediate Discent shall not bee bound, or take aduantage of a warrantie made by or to the sonne, 12. b ¶ 12. a †

45 Where the heire shall bee bound to a warrantie, to which his Ancestor neuer was, & where not, 385. b ¶ 386. a † *

46 Where a speciall Heire shall be vouched, by reason of the warrantie of his Ancestor, vide tit. Voucher.

47 Where the speciall Heire shall ioyne with the Heire at the common Law, to deraigne a warrantie paramount, and how the recompence in value shall enure, vide ibid.

48 Where by warranting the land, all rents, &c. suspended or discharged at the time, are also warranted, & where not, 366. b † 388. b ¶ 389. a †

49 Where notwithstãding lands especially bound to warrantie, the person also of the Feoffor shall bee bound, 102. b †

50 Where the condition of an Oblig. is to defend the lands of the Obligee, by an ouster of a stranger the condition is broken, secus of a condition to warrant the lands, &c. 384. a †

51 Where a warrantie may bee defeated in part, and stand good for other part, 367. b * 393. a ¶

52 Where a warrantie made by an Infant & one of full age, shall be void against the Infant, & good for the whole against him of full age, 367. b ¶

53 Where a Lease for life is made vpon condition to haue Fee with a warrantie in forma prædict. by the increaser of the estate the warrantie shal increase, secus of a Lease for years vpon such condition, 378. a ¶

54 A Lease for yeares, the Remainder in Fee with warrantie in Forma prædict. such warrantie boyd to both, 378. b †

55 A Lease to two, the Remainder to him that first dye with a warrantie in Forma prædict. by the death of one his Heire shall haue the warrantie, 378. b †

56 Where Lands by purchase shall be liable to execution in value, in case of a warrantie by Discent, & where not, 102. a ¶

57 Where vpon a warrantie for life the recouerie in value shall be in fee, & where but for life, 383. b * 387 a ¶

58 Where an Assignee shall take aduantage of a warrantie in Law, & where not, & where by way of Voucher, and where only by Rebutter, 384. a ¶ b †

59 Where a warrantie in Law & assets shall be a good bar in a Formedon, 384. b *

60 What person shall take aduantage of a warrantie in Deed, as Assignee by way of voucher, and what not, 384. b * ¶ 385. a * b † 390. a †

61 Where an Assignee of part of the Land or Estate shall vouch as Assignee, & where not & by what meanes he may take aduantage of the warrantie, 385. a *

62 Where a gift in taile is made with warrantie to the Donee, his Heires, & Assignes, who make a Feoffment and dye without issue, the Feoffee shall not vouch or Rebut, secus of such a gift before the Stat. of Donis, &c. 385. a ¶

63 What persons may take aduantage of a warrantie by way of Rebutter, & what not, vide tit. Rebutter.

64 Where a warrantie may be raised vpon a Release or Confirmation where nothing passe, & where the partie shall take aduantage of such warrantie by way of voucher, & where not, 371. b † 385. a ¶. b † 387. a * vide tit. voucher.

65 Where a warrantie shall not amend or enlarge an estate, 385. b †

66 Where the Estate being auoyded before or after the warrantie descended, the warrantie annexed is defeated also, 366. a † 367. b ¶ 388. b * 389. a * & b †

67 Where by a Re-feoffment of the Feoffor, a warrantie to the Feoffee, his Heires & Assignes is defeated, secus of a Feoffment to the Feoffor, and his wife, 380. b ¶ 390.

330. a†
68 Where such Feoffee infeoffe one of his Feoffors, the warrantie continues, 390. a†
69 Where a Lease for life or gift in tatle to the Feoffor shall bee a suspension of the warrantie during the Estates, 390. a*
70 Where a suspended warrantie & Assets descending vpon the Issue in tatle, together with the Lands discontinued shall hinder a Remitter, 390. a ¶ b†
71 Where by Attainder of Felony or Treason, a warrantie shall be defeated, 390. b* 391. b†*
72 Where tenant in tatle Release to his Disseisor with warrantie, & after is attainted & pardoned, the warrantie shall be void as to his Issue before the Pardon, but a barre to his Issue borne after, 391. b ¶ 392. a*
73 Where a Seigniorie is granted with warrantie, by the Escheate of the Tenancie, the warrantie is defeated, 392. b*
74 Where a collaterall Ancestor release with warrantie, & enter into religion, by his deraignement after the warrantie is defeated, 392. b*
75 What words in a release shal extinguish a warrantie, & what not, 291. b* 392. b ¶ vide tit. Releases.
76 Where after a Release of the warrantie to one Feoffor, the Feoffee shall vouch the other for a moitie, the same where one Joyntenant Release his Companion may vouch, 393 a†
77 Where a Man shall vouch himselfe by reason of a warrantie, & where the wife the husband, & è conuersò, vide tit. Voucher.
78 Where there shall be two Recouries in value vpon one warrantie, & where not, 393. a* ¶
79 Where a warrantie lineall and Assets descending vpon the Issue in tatle, shall be no barre to his Issue after Alienation of the Assets, secus if the Issue had bene barred in a Formedon, by reason of such warrantie, & Assets, 393. b*
80 Where the Tenant by reason of a warrantie shall haue a Scire facias for Assets descended since the Recouerie, & where not, vide tit. Scire facias.
81 Where vpon such Scire facias the Tenant shall Recouer the Land lost, and where the Assets descended, vide ibidem.
82 Where a warrantie shall worke a Discontinuance, and where not, vide tit. Discontinuance.
Vide tit. Recouerie in value, & voucher.

¶ Warrectum seu Warreccum terræ quid. 5. b†.

¶ Warren, vide tit. Forest.

¶ Warre.

1 WHat shall bee said the time of peace and what the time of War, and how it shal bee tried, 249 a ¶ b†*
2 Where a discent in time of warre shall not toll an Entry, vide tit. Entry Congeable.
3 Where an vsurpation in time of warre shall not put the Patron out of possession, vide tit. Presentation.
4 The Ancient manner of seruing the King in his war, 71. a.*
5 Natiues more seruiceable for the warre than strangers, 69. a†
6 Rules & obseruations in Art Militarie, 71. a†

¶ Waste.

1 THe Etymologie of the word, 52. b ¶
2 The diuers kindes of Waste, 53. a* ¶ b*
3 The seuerall wayes of waste, 54. a ¶
4 Against what persons an Action of waste lieth, and against what not, 53. a† b ¶ 54. a
5 What shall be said Waste in house, 53. a* b*
6 Where destruction of fruit trees shall bee waste, and where not, 53. a*
7 What shall bee said waste in a Parke, Doue-house, &c. 53. a ¶
8 What shall bee said waste in trees, and in what trees waste may be done, 53. a ¶
9 Where digging of grauell, mine, &c. shall be waste, and where not, 53. b† 54. b*
10 The suffering of Land to be surrounded, waste, 53. b†
11 Conuersion of arable Land into wood, & è contrà, waste, 53. b†
12 What shall be said waste in fences, 53. b†
13 What waste in Hominibus, 53. b*
14 How waste destruction, & Exile differ, 53. a ¶ b*
15 By what persons an Action of waste lieth, 53. b ¶
16 Where the Heire shall haue an Action for waste done in the life of his Ancestor, & where not, 53. b ¶ 198. a ¶
17 What shall be said a good plea in an Action of waste, and what not, 53. a* b† 54 b* 285. a†*
18 Where by the alteration of the reuersion, waste committed before shall be dispunishable, 53. b ¶
19 Against what persons a prohibition of waste lay at the Common Law, & against what not, 53 b ¶ 316. a*
20 Where waste lies against tenant by the Courtesie, or in Dower after Assignement, and where not, 54. a†. 316. a*
21 Where an Action lieth against the Assignée, for waste done before the Assignment, & where not, 54. a†
22 Where the tenant shall bee punished for waste done by a stranger, & where not, ibidem.
23 Where the wife shall bee punished for waste done in the life of her husband, & è conuersò, 54 a*
24 Where an Occupant shall be punished for waste, 54. a*
25 Where a meane remainder or reuersion shall be an impediment to bring an Action of waste, & where not, 54. a*, 273. a ¶ 293. b ¶ 338. b*
26 Where waste lieth against a Gardeine in Chiualrie, and the penaltie in such action, 54. a†
27 Destruction to what value shall bee said waste, 54. a ¶
28 For Waste sparsim all the Land shal be recouered, 54. a ¶
29 Where Tenant for life shall ioyne in an action of waste 42. a* 53. b ¶
30 Where one Joyntenant, or Tenant in Common for life or in fée shall haue an action of waste against his companion, & where not, 200 b*. vide Stat. W. 2. cap. 23.
31 What interest is giuen to the Lessée by the clause (without impeachment of waste,) 220. a†
32 Where the Lessor recouering in an Action of waste, shall auoid all meane estates & charges made by the Lessée, & where not, 233. b ¶ 234. a†
33 Where the heire shall haue an Action for waste done in the life of his Ancestor, which the Ancestor himselfe could not, 247. b*
34 Where the acceptance of a surrender by the Lessor after

waste done, shall conclude him of his Action of waste, 285, a *

35 where in an action of waste by tenants in speciall taile, the death of one without issue shall abate the writ, 285 a ¶ vide tit. Writs.

36 where a Parson, Vicar, &c. shall haue an Action of waste, 341 a ¶. vide tit. Parson.

37 where by the release of him in the Remainder in taile to tenant for life of all his right he shall not haue an action of waste, secus where he in the Reuersion in Fée make such Release, 345 b ¶. vide tit. Release.

38 where tenant in taile lease for his owne life, an action of waste lieth against the Lessée, 345. b ¶

39 In waste the place wasted the principall, & not damma-ges, 198, a ¶ 355 b † ¶

40 where in an Action of waste by two, the Release of one shall barre the other, & where not, 355. b † ¶

41 where in an Action of waste, summons & seuerance lieth, & where not, 355. b ¶

42 where vpon a Recouery by default in waste, a writ of Disceit, or Quod ei deforceat lieth, vide tit. Quod ei deforceat.

43 where vpon a verdict in waste no attaint lyeth, vide tit. Attaint,

44 where an Action of waste lieth, albeit the Lessor had nothing in the Reuersion, at the time of the waste committed, 356. a ¶

45 where Riens en le Reuersion shall be a good plea by the Lessée in an Action of waste, & where not, 356, a *

¶ Way.

1 The seuerall kindes of wayes, 56. a *

2 what remedie for a disturbance in a publicke or priuate way, & what not, 56, a †

¶ Wera & Were quid, 127. a * 287 b ¶

¶ Wit seu Wita quid, 127. a †

¶ Witnesse, vide tit. Testimonies.

¶ Woodgeld quid, 233 a ¶

¶ Worscot quid. 71 a †

¶ worth quid, 5, b ¶

¶ Writs.

1 Briefe vnde, 73. b †

2 The description of a writ, 73. b *

3 The seuerall sorts of writs, 73. b * ¶

4 The difference betweene a writ and an Action, vide tit. Action.

5 What writs may bee maintained quia timet before any molestation, &c. a *

6 where the writ shall be generall, and the count speciall, 26. b ¶ 53. a † 54. b † 235. b † 344. a †

7 Vpon what plea to the disabilitie of the person the writ shall abate, & vpon what not, 133. b ¶ 134. a † 135. b *

8 where an Action well begun determineth in part by the Act of Law, the writ as to the whole shall abate, and where not, 285. a * ¶

9 where the profession of the Tenant or Defendant in Religion pendente placito shall not abate the writ, 248. b ¶

10 where the depriuation of the Defendant shall abate the writ, secus of a Resignation, ibid.

11 where the Disseisin of the Tenant in a Præcipe, by the Demandant to the vse of others, shall not abate the writ, vide tit. Disseisin.

12 where the death of one plaintife in a Q. Impedit shall not abate the writ, vide tit. Quare Impedit.

13 where an Amerciament shall be due for the abatement of a writ, & where not, vide tit. Amerciament.

14 where seuerall writs of Customes and Seruices lye for the Deforcement of one and the same Seruice, 154. a †

15 where two ioyning in a grant of an annuitie, the Grantée shall haue seuerall writs, and where but one, vide tit. Annuitie. 6.

16 In what places & Counties writs ought to be brought, vide tit. Action. 6

17 writ de ingressu sine assensu Capituli, whence so called, & where it lyeth, 325. b *

18 The writ ex graui querela, where it lyeth, 111. a ¶

19 De domo reparanda, where it lyeth 56. b † 200. b †

For other writs vide their proper titles.

Dedit Deus his quoque finem.

FH
MVSEVM
BRITANNICVM

Amongst our Stat: or Acts of Parl: have a
cular eye on ye Stat. of Armes or Acts of
12 C. 2 & ye Stat. of Frauds & Perjuries made
ye 29 C. 2. for much of ye Law is alter'd
by them, since Littleton or Coke wrote. And so
regard must be had to those Acts of Parl: which
are of daily use. Such are ye Stat. concerning
Administration of Intestats Estates, Bail & main-
prize, ye Crown, Distresses, Election, Fines, Habeas
corpus, Informers, Judicial Proceedings, or Amends
of ye Law, Limitation of Actions, ye Enabling &
disabling Stat. concerning Lands, ye Stat. concern-
ing ye Dissolution of Monasteries, Officers & Officers,
Recoveries, Residence, Service & Sacraments, Tithes
&c. Enrolments &c.
Note yt Sr Mat. Hales in his preface to Rolls Abridg-
ment says
That ye title of Dower, & its several kinds (as ad
ostium Ecclesiæ &c) is neglected by ye common use
of Fines since 27. H. 8 C. 10.
yt ye title of Homage, Fealty, Escuage, Homage
Auncestrel, may be but cursorily read over.
yt Knights Service & its Appendixes as Wardship
&c. are all become useless by ye Act of Abolition
of Knights. 12 C. 2. 24.

waſte done, ſhall conclude him of his Action of waſte, 285, a *

35 where in an action of waſte by tenants in ſpeciall tatle, the death of one without iſſue ſhall abate the writ, 285 a ¶ vide tit. Writs.

36 where a Parſon, Vicar, &c. ſhall haue an Action of waſte, 341 a ¶. vide tit. Parſon.

37 where by the releaſe of him in the Remainder in tatle to tenant for life of all his right he ſhall not haue an action of waſte, ſecus where he in the Reuerſion in Fée make ſuch Releaſe, 345 b ¶. vide tit. Releaſe.

38 where tenant in tatle leaſe for his owne life, an action of waſte lieth againſt the Leſſée, 345. b ¶

39 In waſte the place waſted the principall, & not damma=ges, 198, a ¶ 355 b † ¶

40 where in an Action of waſte by two, the Releaſe of one ſhall barre the other, & where not, 355. b † ¶

41 where in an Action of waſte, ſummons & ſeuerance lieth, & where not, 355. b ¶

42 where vpon a Recouery by default in waſte, a writ of Diſceit, or Quod ei deforceat lieth, vide tit. Quod ei deforceat.

43 where vpon a verdict in waſte no attaint lyeth, vide tit. Attaint,

44 where an Action of waſte lieth, albeit the Leſſor had nothing in the Reuerſion, at the time of the waſte committed, 356. a ¶

45 where Riens en le Reuerſion ſhall be a good plea by the Leſſée in an Action of waſte, & where not, 356, a *

¶ Way.

1 The ſeuerall kindes of wayes, 56. a *

2 what remedie for a diſturbance in a publicke or priuate way, & what not, 56. a †

¶ Wera & Were quid, 127. a * 287 b ¶

¶ Wit ſeu Wita quid, 127. a †

¶ Witneſſe, vide tit. Teſtimonies.

¶ Woodgeld quid, 233 a ¶

¶ Worſcot quid. 71 a †

¶ worth quid, 5, b ¶

¶ Writs.

1 BRiefe vnde, 73. b †

2 The deſcription of a writ, 73. b *

3 The ſeuerall ſorts of writs, 73. b * ¶

4 The difference betweene a writ and an Action, vide tit. Action.

5 What writs may bee maintained quia timet before any moleſtation, 100. a *

6 where the writ ſhall be generall, and the count ſpeciall, 26. b ¶ 53. a † 54. b † 235. b † 344. a †

7 Vpon what plea to the diſabilitie of the perſon the writ ſhall abate, & vpon what not, 133. b ¶ 134. a † 135. b *

8 where an Action well begun determineth in part by the Act of Law, the writ as to the whole ſhall abate, and where not, 285. a * ¶

9 where the profeſſion of the Tenant or Defendant in Religion pendente placito ſhall not abate the writ, 248. b ¶

10 where the depriuation of the Defendant ſhall abate the writ, ſecus of a Reſignation, ibid.

11 where the Diſſeiſin of the Tenant in a Præcipe, by the Demandant to the vſe of others, ſhall not abate the writ, vide tit. Diſſeiſin.

12 where the death of one plaintife in a Q. Impedit ſhall not abate the writ, vide tit. Quare Impedit.

13 where an Amerciament ſhall be due for the abatement of a writ, & where not, vide tit. Amerciament.

14 where ſeuerall writs of Cuſtomes and Seruices lye for the Deforcement of one and the ſame Seruice, 154. a †

15 where two ioyning in a grant of an annuitie, the Grantée ſhall haue ſeuerall writs, and where but one, vide tit. Annuitie. 6

16 In what places & Counties writs ought to be brought, vide tit. Action. 6

17 Writ de ingreſſu ſine aſſenſu Capituli, whence ſo called, & where it lyeth, 325. b *

18 The writ ex graui querela, where it lyeth, 111. a ¶

19 De domo reparanda, where it lyeth 56. b † 200. b †

For other writs vide their proper titles.

Dedit Deus his quoque finem.

FH
MVSEVM
BRITANNICVM

Amongst our Stat: or Acts of Parl: have a
cular eye on ye Stat. of Armes enacted ye
12 C. 2 & ye Stat. of Frauds & Perjuries made
ye 29 C. 2. for much of ye Law is altered
by them, since Littleton or Coke wrote. And to
regard must be had to those Acts of Parl: which
are of daily use. Such are ye Stat. concerning
Administration of Intestats Estates, Bail & main-
prise, ye Crown, Distresses, Election, Fines, Habeas
corpus, Informers, Judicial Proceedings, or Amend^t
of ye Law, Limitation of Actions, ye Enabling &
disabling Stat. concerning Lands, ye Stat. con-
ing ye Dissolution of Monasteries, Officers & Officers,
Recoveries, Residence, Service & Sacraments, Tithes
&c. & Enrolments &c.

Rob. ye Stat. Hubert in his preface to Rot. Parl.
mont says

That ye title of Dower, & its several kinds (as ad
ostium Ecclesiæ &c) is neglected by ye common age
of Lawyers. 27. H. 6 C. 10.

So ye title of Homage, Fealty, Fealty, Homage
Auncestrel, may be but cursorily red over.

The Learning of Knt Service & its Appendixes as Wardship
&c. is all become useless by ye Act of Alienation
of Knights. 12 C. 2. 24.

in Villenage, & yt Several Appendix
are now also antiquated.

Ye Ill of Profession & Disaignment are wholy
run away by 27. H. 8 & 31. H. 8

ye Learning touching ye Title of Lands now
depends much upon ye Stat. of Disclaim particularly upon ye 2 W. & M. 6. 5 which is an alteration but of late

ye preface says too, yt ye Title of Deeds, do fast away Entries, & continual claim by ye 32. H. 8. 6. 33

yt ye Title of Attornment was a difficult Title as it depended, & justly clamat, Judm redditum reddit, for quid juridica &c. But it grew almost obsolete by ye invention of Feoffm to uses, by Bargain & Sale, by Lease & Release, & by Deeds enrolled according to ye Stat. 27. H. 8. 16. wch also supplies ye difficulties of Execution of Estates by Levying Fines & indeed ye Learning of Attornments is now wholly rendered useless by ye 4 & 5 of P. Ann. entitled an Act for ye Amendment of ye Law.

Some kind of Release & confirmations are also supplied by ye above new invantions.

ye Titles of Discontinuance & Remitter are abridged by Several Acts of Parl. viz. 4. H. 7. 24 32. H. 8. 36. 11. H. 7. 20. 1 Eliz. 13. Eliz. 10.

Warranties of Warr. for Life & Collateral Warr. are made void by ye 4 & 5 of P. & M.

in Tithonage, & ye Inrolment Appendix
are now also antiquated.

Ye Act of Profession & Registrement are wholly
taken away by 27. H. 8 & 31. H. 8

ye Learning touching ye Title of Lands now
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ye preface says for ye ye Title of Deeds, to take away Entries, & continual claim by ye 32. H. 8. C. 33

ye ye Title of Attornment was a difficult Title &
ye Appendix, Quia jacit clamat, Quam redditum
reddit, for quid pro quo &c. But it grew almost
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& Sale, by Lease & Release, & by Deeds enrolled, according to ye Stat. 27. H. 8. 16. wch also supplies ye
difficulties of Execution of Estates by Livery & Seisin
& indeed ye Learning of Attornments is now wholly
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32. H. 8. 36. 11 H. 7. 20. 1 Eliz. 13. Eliz. 10.

Warranties of Tenant for Life & Collateral warranties are made void by ye 4 & 5 of W. & M.